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No. 04-1739

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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

JEFFREY BEARD,

Petitioner

v.

RONALD BANKS,

Respondent

OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI

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I. COUNTERSTATEMENT OF THE CASE

In this Section 1983 class action, inmates who are confined on Level 2 status in the Pennsylvania Department of Corrections' Long Term Segregation Unit challenge the constitutionality of a Department policy which denies them access to all newspapers and magazines that are not religious or legal in nature and prohibits them from having photographs of family members or friends in their cells. See *Banks v. Beard*, 399 F.3d 134, 136 (3 Cir. 2005) The prisoners contend that precluding them from receiving information from periodicals about current political, social, and other activities occurring outside the prison walls and not allowing them to have even a single photograph of a spouse or child in their cells offends the free speech component of the First Amendment.[1] See *Banks*, 399

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[1] The First Amendment's free speech provision encompasses the right to receive information and ideas through written publications. *Kleindienst v. Mandel*, 408 U.S. 753, 762-63 (1972). This right has been held to survive incarceration. See *Crofton v. Roe*, 170 F.3d 957, 959 (9 Cir. 1999); *Sizemore v. Williford*, 829 F.2d 608, 610 (7 Cir. 1987). The right to possess photographs in a prison setting has also been found to implicate free speech. See *Davis v. Norris*, 249 F.3d 800, 801 (8 Cir. 2001); *Balance v. Virginia*, 130 F.Supp.2d 754, 758-759 (W.D.Va. 2000). The Department's petition does not take issue with the Circuit Court's conclusion that denying Level 2 inmates access to these materials impinges on constitutionally protected rights.

F.3d at 145. More particularly, they assert that the policy fails the *Turner v. Safley* reasonableness test either because it bears no rational connection to a legitimate penological interest or is an exaggerated response to such an interest. See *Banks*, 399 F.3d at 138.

In the motion for summary judgment submitted below, the Department of Corrections argued that the policy is reasonably related to the penological interests of rehabilitation (through behavior modification) and security (by reducing the possibility of cell fires, the concealment of contraband, the creation of paper weapons, and the hurling of feces). See *Banks*, 399 F.3d at 137-138. The District Court granted the Department's motion, holding that the policy is reasonably related to both interests. *Banks*, 399 F.3d at 135. On appeal, a panel of the Third Circuit held that the evidentiary record does not establish as a matter of law that the policy bears a reasonable relationship to the asserted interests. *Banks*, 399 F.3d at 148. The panel reversed the entry of summary judgment and remanded the case for further proceedings. *Banks*, 399 F.3d at 148. When the Department's petition for a rehearing before the full Circuit Court was denied, the Department filed the pending petition for a writ of certiorari in this Court. The petition frames the following question: "*Does a prison policy that denies newspapers, magazines, and photographs to the most difficult inmates in the prison system in an effort to promote security and*

good behavior violate the First Amendment under the standards of Turner and Overton?"

The summary judgment record reflects that the Department of Corrections established its Long Term Segregation Unit in April of 2000 on the grounds of the State Correctional Institution at Pittsburgh as a place to confine inmates the Department views as too disruptive, violent, or problematic to house elsewhere in the State prison system. [A91; A3; A12] The record shows that there are approximately forty inmates segregated in the Unit at any given time, virtually all of whom are confined on Level 2 status -- the classification inmates are given when admitted to the Unit and in which they remain unless and until they are elevated to Level 1 status for satisfactory behavior. [A92-93; A26; A21; A3; A67] The evidence confirms that the policy of denying Level 2 Long Term Segregation inmates access to all but religious and law-related periodicals and prohibiting them from having personal photographs in their possession is both absolute and long-lasting. Pennsylvania Department of Corrections' policy prohibits Level 2 inmates from receiving non-religious/non-legal newspapers or magazines directly from publishers, from the prison library, or from any other source for as long as they are on that status. *Banks*, 399 F.3d at 137. The policy prohibits Level 2 inmates from receiving even individual articles clipped from periodicals unless the articles have a

personal connection to them. *Banks*, 399 F.3d at 137. The policy also precludes Level 2 prisoners from receiving and possessing personal photographs for the entire time they remain on that level. *Banks*, 399 F.3d at 137.

Under LTSU policy, inmates are required to remain on Level 2 status for at least ninety days after their admission to the Unit. *Banks*, 399 F.3d at 141. Many prisoners have remained on Level 2 status for months and even years beyond the initial ninety day period because the length of time inmates can be kept on Level 2 is open-ended. There is no expiration date and promotion from Level 2 status is subject to the discretion of prison personnel. *Banks*, 399 F.3d at 137, 141 A number of LTSU prisoners have been on Level 2 status since the Unit was established. *Banks*, 399 F.3d at 141. [See A93]

Pursuant to the challenged policy, all prohibited newspapers, magazines, and photographs in an inmate's possession at the time of his transfer to the Long Term Segregation Unit are seized and placed in storage. [A101] All such newspapers, magazines, and photographs sent to Level 2 inmates are intercepted and placed in storage. [A100; A106; A23] All such materials found in the cells of Level 2 prisoners are treated as contraband and destroyed. [A100] The only form of published reading material Level 2 inmates are permitted access to (other

than newspapers and magazines of a religious or legal nature) are *"leisure books"* that can be ordered from the prison library. [A32] Rules governing the Long Term Segregation Unit prohibit Level 2 inmates from having radios or televisions; prohibit telephone calls unless they are of an emergency or legal nature; limit Level 2 inmates to one social visit a month with an immediate family member; and require the prisoners to remain inside their cells 23 hours a day, one man to a cell. [A3; A12; A7; A21-23] Inmates are rarely able to speak or socialize directly with each other and are relegated to an existence of rigid isolation and idleness. [A3; A12] In this closed environment, the impact of the challenged policy is stifling and far-reaching. It essentially blocks the flow of information to these men about current political, social, and other public events occurring outside the prison walls. See *Banks*, 399 F.3d at 145. It also deprives them of the emotional benefits inherent in looking at photographic images of spouses, children, parents, and close friends.

In contrast to the blanket prohibition against periodicals for Level 2 inmates, the policy permits Level 1 Long Term Segregation Unit prisoners to have a subscription newspaper in their cells -- which can be exchanged on one-for-one basis after being read. [A77; A98] In addition, Level 1 prisoners are allowed to have five subscription magazines inside their cells at any time. [A77; A98] As underscored by the Circuit Court panel,

these are not the only differences between the two levels in terms of privileges. "*[E]ven without the challenged restriction, Level 2 LTSU segregation is more restrictive than Level 1 in several respects.*" *Banks*, 399 F.3d at 148. For example, Level 1 prisoners are permitted two social visits per month with "*any approved visitor.*" *Banks*, 399 F.3d at 148. In contrast, Level 2 prisoners are limited to only one visit per month with "*immediate family only.*" [A 21] Level 1 inmates are routinely permitted to have one fifteen minute social telephone call each month. *Banks*, 399 F.3d at 148. In contrast, Level 2 prisoners are prohibited from having any social telephone calls. [See A 21] Level 1 inmates have weekly access to the prison commissary to make purchases of food and other items. *Banks*, 399 F.3d at 148. In contrast, Level 2 inmates have no access to the commissary. [Compare A 21-22] Level 1 inmates can receive pay for their work as Unit janitors. *Banks*, 399 F.3d at 148. In contrast, Level 2 inmates cannot receive compensation for janitorial work. *Banks*, 399 F.3d at 148. As a matter of policy, Level 1 inmates are permitted to participate in GED and Special Education studies. *Banks*, 399 F.3d at 148. Level 2 inmates cannot participate in those programs. *Banks*, 399 F.3d at 148. LTSU policy provides that "*[a]dditional privileges/cell property may be authorized [for Level 1 inmates] at the discretion of the Unit Management*

Team or the [Program Review Committee]."[2] [A22] There is no such provision for Level 2 inmates. [See A21]

The summary judgment record also confirms that the Department's policy of denying Level 2 inmates access to all non-religious/non-legal periodicals as well as photographs of loved ones differs dramatically from the policies that govern every other category of segregation in the State prison system. See *Banks*, 399 F.3d at 143. In fact, thousands of Pennsylvania prisoners are given access, as a matter of policy, to newspapers and magazines through subscriptions with publishing companies or purchases from the prison commissary and, with only one exception, are permitted to have photographs of relatives and friends in their cells. [A5, ¶15; A6, ¶19; A13, ¶15; A14, ¶19]

Department policy authorizes Special Management Unit inmates (segregated inmates who have been identified as being among the most difficult inmates in the system) to have varying amounts of subscription newspapers, magazines, and photographs in their cells, depending upon their classification levels. [A77; A59; A111] Department policy allows Death Row inmates to have as many subscription magazines in their cells that

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[2] As discussed later, the Circuit Court found these differences to be relevant to the rehabilitation objective asserted by the Pennsylvania Department of Corrections.

can be stored in a standard records-size box (with their other reading materials or documents) as well as one subscription newspaper, which can be replaced on a one-for-one exchange basis. [A85] Department policy allows the dangerous inmates who are segregated on administrative custody status in the Department's Restricted Housing Unit to have one subscription newspaper in their cells (which can be exchanged on a one-for-one basis), subscription magazines, and up to ten photographs. [A111; A77; A98; A49-51]

In the framework of its motion for summary judgment, the Department of Corrections submitted the deposition testimony of Joel Dickson, the Deputy Superintendent who supervises the LTSU. According to Dickson, the withholding of these so-called "privileges" in Level 2 Long Term Segregation is a way to modify negative behavior, prompt inmates to comply with prison rules, enable prisoners to become "more productive citizen[s]" if released from prison, or eventually be integrated into the general prison population if not released from prison. [A109-111; see also A21] In addition, the Department presented testimony from Dickson that prohibiting all periodicals and photographs in Level 2 Long Term Segregation reduces the possibility of fires in the Unit, makes it more difficult for inmates to hide contraband items in their cells, and eliminates a potential way for inmates to fashion weapons or implements with

which to fling human waste and other projectiles inside the Unit. [A110]

The Third Circuit panel considered these stated objectives, reviewed the evidentiary record, analyzed the record under the illumination of the four *Turner* factors, and concluded that "*the DOC's policy that prohibits inmates confined in the LTSU at Level 2 status access to photographs, and all newspapers and magazines which are neither legal nor religious in nature, cannot be supported as a matter of law by the record in this case.*" *Banks*, 399 F.3d at 148. The Department of Corrections argues in its petition for certiorari that the holding was fundamentally skewed by the panel's alleged deviations from principles established in *Turner v. Safley, 482 U.S. 78 (1987)* and in *Overton v. Bazzetta*, 539 U.S. 126 (2003); deviations which the Department contends reflect a conflict among the Circuits as to the proper "*application*" of those cases. The Department of Corrections' petition cites three principles that the Third Circuit panel purportedly failed to follow which two other circuits, according to the Department, have adhered to. The first is the panel's alleged failure to follow *Turner's* admonition that "*judgments regarding prison administration generally be made by prison officials, not judges.*" The second is the Third Circuit panel's alleged failure to adhere to *Overton's* prescription that it is the inmates' burden to establish the unconstitutionality of a challenged policy; not

the burden of prison officials to show that a policy is constitutional. The third is the panel's alleged failure to adhere to the principle that the *"absence of ready alternatives factor"* in *Turner* is not a least restrictive alternative test that requires prison officials to *"set up and shoot down every conceivable alternative method of accommodating the claimant's constitutional complaint."*[3] [See Petition, pp. 7-10] These contentions, which are addressed below, ignore the actual summary judgment record and how the Third Circuit actually analyzed that record. The Department's argument attempts to portray a conflict among the circuits, where none, in fact, exists.

II. ARGUMENT AGAINST GRANTING CERTIORARI

A. The Judicial Restraint/Proper Deference Contentions

When attempting to persuade this Court that there is a conflict among the circuits with respect to the application of the *Turner* analysis, the Department of Corrections asserts that *"[d]espite the Court's clear direction in Turner, and again in Overton, some courts of Appeals, like the Third Circuit, have been reluctant to give proper deference to prison officials in matters of prison*

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[3] In addition, the Department insists that the Third Circuit's reversal of summary judgment was diametrically *"at odds"* with the *Turner* and *Overton* precedents and, therefore, should be summarily reversed.

administration" in cases such as this. [Petition, p. 9] The Department summarizes cases that are said to lie on opposite sides of the "*proper deference*" ledger and insists that these decision show there is a need for this Court to review the present case in order to provide lower courts necessary guidance on the application of the *Turner/Overton* dictates. The Department is mistaken.

The Department of Corrections exaggerates the amount of deference that must be accorded to prison administrators under *Safley* and *Overton*. In *Thornburg v. Abbott*, 490 U.S. 401 (1989), this Court reiterated what was implicit in *Turner:* that the "*reasonableness standard is not toothless.*" *Thornburg*, 490 U.S. at 414. The reasonableness standard is not toothless because federal courts are expected not only to consider the need to exercise judicial restraint and to give deference to the policy decisions of prison administrators, but also to consider and protect the constitutional rights of inmates who are affected by such policies. See *Turner*, 482 U.S. at 84-85. When establishing the standard in *Turner*, this Court recognized that inmates are not stripped of their constitutional rights as they pass through prison gates; that among the *"principles that necessarily frame our analysis of prisoners' constitutional claims...is that federal courts must take cognizance of the valid constitutional claims of prison inmates;"* that if a "*prison regulation or practice offends a fundamental constitutional guarantee,*

federal courts will discharge their duty to protect constitutional rights;" and that the "*standard of review for prisoner's constitutional claims...is responsive both to the policy of judicial restraint regarding prisoner complaints and [to] the need to protect constitutional rights." Turner, 482 U.S.* at 84-85. In the final analysis, a federal court, when addressing a challenge to a prison policy that implicates a prisoner's constitutional rights, is "*called upon to balance [those] rights against [legitimate] governmental interests." Turner, 482 U.S.* at 88.

Despite the need for judicial restraint and the considerable deference that is owed to prison officials, this Court in *Turner* did <u>not</u> decline to strike down a Missouri Division of Corrections inmate marriage policy which permitted inmates to marry only with the permission of the superintendent of the prison and, then, only if there were compelling reasons for approving a marriage. *Turner, 482 U.S.* at 82. The challenged policy prohibited marriages between inmates and civilians as well as marriages between inmates. *Turner, 482 U.S.* at 97. The Missouri Division of Corrections identified security and rehabilitation concerns (the same penological concerns involved in this case) in support of the marriage prohibition. *Turner, 482 U.S.* at 97. The security concern was that "*love triangles*" might lead to violent incidents among inmates. *Turner, 482 U.S.* at 97. The rehabilitation concern was that female inmates were

frequently subject to abuse at home, were overly dependent on males, and that the criminal activities of women were often connected either to their histories of abuse or overdependence. *Turner, 482 U.S.* at 97. The record contained testimony from a prison superintendent that such inmates needed to concentrate on developing self-reliance skills and that he had received several "ill-advised" marriage requests from women prisoners. *Turner, 482 U.S.* at 97.

After reviewing the evidence as well as exercising "[c]ommon sense," this Court determined that the Missouri regulation, as written, was not reasonably related to the penological interests put forth by prison administrators. *Turner, 482 U.S.* at 97. The regulation was determined to be a rule that "*sweeps much more broadly than can be explained by petitioners' penological objectives*" and was characterized as an "*exaggerated response*" to the asserted objectives. *Turner, 482 U.S.* at 97-98. Those conclusions were made despite the insistence of prison officials that security and rehabilitation objectives justified the policy.

When addressing the security concerns of prison officials in *Turner*, this Court wrote:

> *No doubt legitimate security concerns may require placing reasonable restrictions upon an inmate's right to marry, and may justify requiring approval of the superintendent.* ***The Missouri regulation,***

> ***however, represents an exaggerated response to such security objectives. There are obvious, easy alternatives to the Missouri regulation that accommodate the right to marry while imposing a de minimis burden on the pursuit of security objectives. See, e.g., 28 CFR § 551.10 (1986) (marriage by inmates in federal prison generally permitted, but not if warden finds that it presents a threat to security or order of institution, or to public safety).*** *We are aware of no place in the record where prison officials testified that such ready alternatives would not fully satisfy their security concerns. Moreover, with respect to the security concern emphasized in petitioners' brief -- the creation of "love triangles" -- petitioners have pointed to nothing in the record suggesting that the marriage regulation was viewed as preventing such entanglements.* ***Common sense*** *likewise suggests that there is no logical connection between the marriage restriction and the formation of love triangles: surely in prisons housing both male and female prisoners, inmate rivalries are as likely to develop without a formal marriage ceremony as with one...*

Turner, 482 *U.S.* at 97-98. (emphasis added)

In connection with the asserted rehabilitation objective, this Court wrote:

> *Nor, on this record, is the marriage restriction reasonably related to the articulated rehabilitation goal. First, in requiring refusal of permission absent a finding of a compelling reason to allow the*

> *marriage,* ***the rule sweeps much more broadly than can be explained by petitioners' penological objectives.*** *Missouri prison officials testified that generally they had experienced no problem with the marriage of male inmates, see., e.g., 2 Tr. 21-22, and the District Court found that such marriages had routinely been allowed as a matter of practice at Missouri correctional institutions prior to adoption of the rule. 586 F.Supp., at 592. The proffered justification thus does not explain the adoption of a rule banning marriages by these inmates. Nor does it account for the prohibition on inmate marriages to civilians. Missouri prison officials testified that generally they had no objection to inmate-civilian marriages, see e.g. 4 Tr. 240-241, and superintendent Turner testified that he usually did not object to the marriage of either male or female prisoners to civilians, 2 id., at 141-142. The rehabilitation concern appears from the record to have been centered almost exclusively on female inmates marrying other inmates or ex-felons; it does not account for the ban on inmate-civilian marriages.*

Turner, 482 U.S. at 98-99. (emphasis added)

As reflected above, the standard announced in *Turner* does not contemplate that federal courts simply rubberstamp the administrative decisions of prison officials. Nor does it contemplate that prison officials will set constitutional standards by fiat. Deference, within the meaning of *Turner,* does not mean judicial abdication.

Instead, the reasonableness standard permits judges to review the evidentiary record to ascertain whether there is a logical connection between a challenged policy and the penological reason said to underlie the policy and (if there is) to determine whether the policy amounts to an exaggerated response to the asserted reason. A decision, predicated on evidence that a policy is far broader than warranted -- as was the case here -- does not reflect a failure on the part of a court (in the context of summary judgment) to accord proper deference to prison administrators. Instead, it is a proper exercise of a federal court's function in a *Turner* context. The Pennsylvania Department of Corrections' contention that the Third Circuit (as evidenced by the decision in this case) has "*been reluctant to give proper deference to prison officials in matters of prison administration,*" overlooks the analysis undertaken in *Turner*, distorts how the Circuit Court panel analyzed the material facts and controlling legal principles, and advocates a degree of deference which would, if adopted by this Court, render the *Turner* standard a "*toothless*" exercise.

In the present case, after summarizing the evidentiary record, the Circuit Court concluded that prohibiting LTSU Level 2 inmates from having a single newspaper, magazine, or photograph has no significant relationship to the Department of Corrections' stated security objectives because "*[t]here are many other non-*

prohibited means for inmates to fuel fires, hurl waste, conceal contraband and create weapons." *Banks*, 399 F.3d at 143. The Court noted that under existing Department rules, each inmate in the LTSU "*is given a jumpsuit, a blanket, two bed sheets, a pillow case, a roll of toilet paper, a copy of a prison handbook, ten sheets of writing paper, several envelopes, carbon paper, three pairs of socks, three under shorts and three undershirts, and may at any point also have religious newspapers, legal periodicals, a prison library book, Bibles, and a lunch tray with a plate and a cup.* *Banks*, 399 F.3d at 143. The Court recognized that *"[m]any of these items are flammable [and] could be used for the above purposes as effectively as a newspaper, magazine or photograph..."* *Banks*, 399 F.3d at 143. While acknowledging that the Department's regulation does not have to be "*narrowly tailored to the harm it addresses to pass constitutional muster*", and, therefore, does not have to eliminate cell fires or fully address the other security matters identified by the Department, the Court stated that "*if the prohibition of newspapers, magazines and photographs has only minimal effect on security in the LTSU because of the other materials that are permitted in the cells, the relationship between the policy and the penological interest may be too attenuated to be reasonable.*" *Banks*, 399 F.3d at 144. *"It is important to note here,"* the Court stressed, *"that the inmates are not*

requesting unlimited access to innumerable periodicals but for the ability to have one newspaper or magazine and some small number of photographs in their cells at one time." *Banks*, 399 F.3d at 144. In light of the evidentiary record, the Court's conclusion that the link between security and the challenged policy is weak was self-evident and a matter of common sense. It was comparable to *Turner's* common sense conclusion that love triangles in a prison can exist with or without a formal marriage. See *Turner, 482 U.S.* at 98. The conclusion did not represent a failure to properly defer to prison officials.

When determining that the connection between the policy and the Department's rehabilitation objective is attenuated, the Circuit Court noted that "*the DOC has offered no evidence that the rule achieves or could achieve its rehabilitative purpose.*" In fact, the panel's majority opinion indicated that the withholding of periodicals and photographs had not proven effective with LTSU inmates as a rehabilitative tool. *Banks*, 399 F.3d at 141-142. The panel specifically noted that during oral argument (which occurred three years after the policy had been in effect) the Department expressed a "*hope*" that the policy would work. *Banks*, 399 F.3d at 142. That expression of "*hope*" supports an inference that in the years since implementation of the policy, the policy had not worked as a rehabilitation tool and that the

withholding of the First Amendment materials at issue has no more than a tenuous relationship to that objective.

The Circuit Court's evaluation of the second *Turner* factor (whether there is an alternative means available for exercising the burdened right) did not reflect a failure on its part to accord proper deference to prison officials. The panel correctly noted that *"if other avenues are open for the inmate to exercise the right in question, the court should exhibit deference to the judgment of corrections officials, while if no other avenues are available, the inmate's right is given greater weight in the Turner balancing process."* *Banks*, 399 F.3d at 144. The panel properly found that the policy's prohibition is absolute for as long as an inmate remains on Level 2 status and that a Level 2 prisoner *"has no alternative means to exercise his First Amendment right of access to a reasonable amount of newspapers, magazines, and photographs."* *Banks*, 399 F.3d at 145. In conjunction with that determination, it cited the inmates' argument that although they had access to leisure books, they had no meaningful access to news accounts or published information about current political, social, or other public events and activities occurring outside the prison walls, or a way to look at images of loved ones and friends apart from the possibility of infrequent visits. *Banks*, 399 F.3d at 145. Under these circumstances, the level of deference owed to prison administrators was diminished

and the First Amendment rights impacted by the blanket prohibition had relatively greater weight.

When evaluating the third and fourth factors of the *Turner* analysis under the evidentiary record, the Circuit Court was not indifferent to the requirement that it give proper deference to prison officials. The Court noted in conjunction with those factors that it had to determine whether the constitutional right in question could be accommodated without "significant negative consequences" in terms of institutional security and efficiency and whether the prison could "*easily serve its interests*" in other ways "*without infringing upon the rights of prisoners.*" *Banks*, 399 F.3d at 146 (citation omitted) The panel went on to say that the "*existence of obvious, easy alternatives may be evidence that the regulation is not reasonable, but is an exaggerated response to prison concerns.*" *Banks*, 399 F.3d at 146, quoting *Thornburgh v. Abbott*, 490 U.S. at 418. On the other hand, the Court said, "*[w]hen accommodation of an asserted right will have a significant 'ripple effect' on fellow-inmates or prison staff, courts should be particularly deferential to the informed discretion of prison officials.*" *Banks*, 399 F.3d at 146, n. 10, quoting *Turner*, 482 U.S. at 90. These were accurate expositions of relevant legal principles.

The Circuit Court panel held, despite the Department's assertions to the contrary, that it did not agree "*on the record before us, that accommodation of*

these prisoners' rights by giving them reasonable access to a limited number of periodicals and photographs would have such a 'ripple effect.'" *Banks*, 399 F.3d at 146, n. 10. The panel reasoned as follows in connection with any impact an accommodation would have on institutional security:

> *At no point does Banks propose that Level 2 inmates be allowed unmitigated and unregulated access to all periodicals. Rather, Banks proposes, and the District Court discussed, two alternative policies which would accommodate the prisoners' rights. First, the DOC could establish a specific reading period, or several different reading periods, in which guards deliver a single newspaper or magazine to an inmate's cell, if requested, and retrieve it at the close of the period.* ***The DOC could easily control the number of periodicals in his cell at one time, the frequency of the distributions, the amount of time any inmate would be in possession of the materials, as well as the number of inmates who would have periodicals in their cells at any one time. The DOC could also limit the total number of photographs a Level 2 inmate could have in his cell at one time to what they consider a reasonable number. In conjunction with this policy, access to periodicals could be entirely withheld from those individual prisoners who, in the judgment of prison officials, would pose a particular risk given their records, or those inmates who have abused their use of periodicals or photographs.*** *The DOC asserts that such*

> *a limited restriction would not prevent Level 2 inmates from using the materials to start fires, fling feces and create weapons and therefore, during the reading period, extra monitoring of cells would be required, thus affecting the prison's resources and possibly the safety of other inmates.*
>
> *We fail to see, however, as discussed above under factor one, how an inmate's hour-long possession of Graterfriends would require further monitoring when at any time that inmate may be in possession of 10 sheets of writi g paper, and as many copies of the Watchtower, the Jewish Daily Forward, and the Christian Science Monitor Magazine as can fit in a records center box...*

Banks, 399 F.3d. at 146-147. (emphasis added)[4]

The Circuit Court went on to discuss a second alternative to completely banning periodicals and photographs for prisoners on Level 2 status. Just as the panel had concluded when addressing the first alternative, it found that the second proffered

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[4] The accommodation cited by the Circuit Court of prohibiting specific inmates who either abused or who (in the Department's judgment) would abuse the materials was consistent with the approach discussed in *Turner* when this Court struck down the blanket banning of inmate marriages. The accommodation was the prohibition of particular inmates from marrying *"if the warden finds that it represents a threat to security or safety."* *Turner*, 482 U.S. at 98. A more limited, particularized approach was obviously not viewed by this Court as being inconsistent with the proper deference that must be given to prison administrators.

accommodation would have little impact on security. The Court wrote:

> *Alternatively, individual prisoners could be escorted to the secure mini-law library to read a periodical of their choosing. Again, the District Court found that such an accommodation would intensify security concerns by increasing the amount of inmate movement and thereby placing a formidable burden on LTSU staff. Inmates are already permitted to leave their cells under guard escort to use the library to view legal materials, so individual inmate escort has not been deemed prohibitively burdensome or dangerous by prison administrators. Although it is possible that the demand for mini-law library sessions may increase if the policy were changed, the DOC has not shown how this would significantly increase the burden on prison staff. Superintendent Dickson explained in his deposition that under current LTSU policy, one inmate is allowed out of his cell at a time to visit the law library for one two-hour session. A roster of requests, like a waiting-list is maintained and fulfilled on a first-come first-serve basis. The amount or frequency of inmate movement is already regulated. If the inmates' rights to read other periodicals were accommodated, that would not change.* ***We fail to see how the mere addition of non-legal and non-religious periodicals to the materials already available to the inmates in the library would create the "ripple effect" cited by the DOC.*** *In short, the DOC has not shown that a change in the publication ban would mean "significantly less liberty and safety for everyone else, guards and*

> *other prisoners alike." Abbott*, 490 U.S. at 418, 109 S.Ct. 1874 (quoting *Turner*, 482, U.S. at 92, 107 S.Ct. 2254).

Banks, 399 F.3d. at 147. (emphasis added)

Finally, the Circuit Court panel addressed the impact on rehabilitation of permitting Level 2 inmates to have access to a limited number of the prohibited materials. When concluding that the impact would not be significant, the Court reasoned:

> *[T]he District Court asserted that the alternatives proposed come at more than a de minimus cost to the DOC's behavior modification goals because the accessibility of periodicals would render the threat of Level 2 segregation toothless as a deterrent. However, the District Court overlooked* ***the extent to which, even without the challenged restriction, Level 2 LTSU segregation is more restrictive than Level 1 in significant respects****. For example, Level 1 inmates are permitted two family visits and one fifteen minute telephone call per month. They are also permitted to spend $5.00 per week at the commissary on items defined by the Unit Team. Additionally, while inmates at both levels receive in-cell counseling and visits from chaplains, and can be employed as Unit Janitor, only Level 1 inmates receive compensation as per DC-9816 Inmate Compensation System, and only Level 1 inmates are permitted GED and Special Education in cell study. [App. 32]*

Banks, 399 F.3d at 147-48.[5] (emphasis added)

None of the above analysis deviates from *Turner* principles. Instead, the Court's approach reflects what a federal court is authorized and expected to do when engaging in the weighing process envisioned by the Supreme Court. When ascertaining whether a challenged policy represents an exaggerated response, deference does not mean that a court should accept, at face value, the assertion of prison officials that a less restrictive policy will result in greater harm to security, rehabilitation, or other penological interests. Instead, a court must ask and determine whether such fears are "*reasonably founded.*" See *Thornburgh v. Abbott, 490 U.S. at 419.*

B. The Department's Burden of Proof Contention

Overton v. Bazzetta holds that "*[t]he burden...is not on the State to prove the validity of prison regulations*

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[5] In addition, as noted before, while "*[a]dditional privileges/cell property may be authorized [for Level 1 inmates] at the discretion of the Unit Management Team or the [Program Review Committee]*", Level 2 inmates are not eligible for additional privileges or cell property. [See A21-22] With respect to visits, Level 2 inmates may only visit with immediate family members while Level 1 prisoners can visit with any approved visitor, whether immediate family or not. [A75]

but on the prisoner to disprove it." Overton, 539 U.S. at 133. The Department argues that the Circuit Court improperly required it to prove the constitutionality of its policy. That argument appears to be based on the Circuit Court's references to the lack of certain evidence in the summary judgment record indicating a logical connection between the challenged policy and the stated security/rehabilitation objectives.

When examining the record in the context of first *Turner* factor, the Circuit Court noted there is no evidence in the record of periodicals or photographs being misused in any of the ways described by the DOC; of the frequency of fires in the LTSU or elsewhere in the prison; of any LTSU inmates being transferred to the Unit because they had created security risks with periodicals or photographs; or of the policy working as a rehabilitation tool. The Court did not, however, rest its denial of summary judgment on the lack of such evidence or, more broadly, on the lack of a logical connection between the policy and the stated penological objectives. Instead, the panel cited to additional facts (as discussed in the preceding section) that indicated an attenuated relationship between the policy and the stated objectives as well as facts pertinent to the second, third, and fourth *Turner* factors. In the end, the panel's decision rested on evidence -- most of it adduced by the inmates -- that the policy was an exaggerated response to the penological

interests asserted by the Department and, therefore, was not reasonably related to legitimate penological interests under the four-part *Turner* test.

In conjunction with the issue of whether a prison policy is an exaggerated response to legitimate penological interests, "*when prison officials are able to demonstrate that they have rejected a less restrictive alternative because of reasonably founded fears that it will lead to greater harm, they succeed in demonstrating that the alternative they in fact selected was not an 'exaggerated response' under Turner.*" See *Thornburgh*, 490 U.S. 419. As reflected in the Circuit Court's analysis, that did not occur here with respect to the two alternatives proposed by the inmates. The record did not contain evidence of such reasonably founded fears on the part of prison officials.

C. The Department's Conflict Among the Circuits Contention

The Department of Corrections argues that the Third Circuit's decision in this case "*is part of a split among the circuit courts applying Turner to analyze restrictions like these.*" [Petition, p. 9] The Department cites two cases that allegedly "*have taken an approach more in line with Turner and Overton.*" [Petition, p. 10] One is *Maydak v. United States*, 98 Fed.Appx. 1, 2004 WL 852218 (D.C.Cir. 2004). The other is *Wirsching v.*

Colorado, 360 F.3d 1191 (10 Cir. 2004). The Department suggests that the courts in *Maydak* and *Wirsching* (unlike what the Department alleges occurred in the present case) accorded substantial deference to the judgment of prison administrators and placed the burden of proof on the inmates, not on administrators, in connection with the constitutionality of the policies at issue.

Maydak is an unpublished opinion of a District of Columbia Circuit Court panel. Under Rule 36(c) of the D.C. Circuit, "*[w]hile unpublished orders and judgment may be cited to the court...a panel's decision to issue an unpublished disposition means that the panel sees no precedential value in that disposition.*" [A134-137] Under these circumstances, the *Maydak* case serves as a poor basis for establishing the existence of a split among circuits.

In the *Wirsching* case, the Tenth Circuit's approach with respect to the proper deference and burden of proof principles did not differ in any significant way to the Third Circuit's treatment of those principles. Nor did the overall application of the *Turner/Overton* standard in *Wirsching* differ in any material way from the Third Circuit's application of the standard. The differences in the outcome of the two cases stem, instead, from the material differences in their facts.

At the threshold of its analysis, the *Wirsching* panel stated: *"Turner... requires courts, on a case-by-case basis, to look closely at the facts of a particular case and the specific regulations and interests of the prison system in determining whether prisoners' constitutional rights may be curtailed."* *Wirsching*, 4360 F.3d at 1199. (citation omitted) In the process of determining the constitutionality of a Colorado prison policy that prohibited visitations between sex offenders and their children, the Tenth Circuit panel concluded, after looking at the factual record, that prisoners had an alternative means of remaining in contact with children, namely, by letter and telephone. *Wirsching*, 360 F.3d at 1199. In the present case, the Third Circuit panel concluded on the basis of the record that there is no alternative way for Level 2 prisoners to have access to secular/non-legal periodicals or personal photographs. *Banks*, 399 F.3d at 145. In *Wirsching*, the Colorado Department of Corrections offered evidence that contact between sex offenders and their own children may adversely affect both the child and the offender. However, as noted by the *Wirsching* panel, the inmate "*offered no evidence to support his challenges to the CDOC's objectives.*" *Wirsching*, 360 F.3d 1191. In the present case, supporting evidence was offered by the inmates. See *Banks*, 399 F.3d 141-145. In *Wirsching*, the inmate made <u>arguments</u> but presented no <u>testimony</u> to rebut the

Colorado Department of Corrections' testimony related to the burden an accommodation would have on the operation of the prison and penological objectives.[6] See *Wirsching*, 360 F.3d at 1201. In this case, there is a significant body of evidence related to the minimal impact that accommodations would have in the operation of the LTSU and the stated objectives. See *Banks*, 399 F.3d at 146-148.

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[6] The Tenth Circuit panel noted if the prisoner had "*offered evidence as to the feasibility and minimum institutional effect of a less restrictive visitation policy, this would be a closer case.*" *Id.* at 1201.

III. CONCLUSION

It is respectfully submitted, for the reasons expressed above, that the Pennsylvania Department of Corrections' petition for a writ of certiorari should be denied. In addition, the Department's request for summary reversal of the Circuit Court's decision should be denied for the reasons outlined in sections 1 and 2 of this reply.

Respectfully submitted,

Jere Krakoff
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Pittsburgh, PA 15219
412.232.0276

Counsel for Respondent

DATED: September 30, 2005

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RONALD BANKS, for himself and on behalf of all similarly situated prisoners who are confined or will be confined in Long Term Segregation Units of State prisons located in the Western Judicial District of Pennsylvania, Plaintiffs, v. JEFFREY BEARD, in his official capacity as Secretary of the Pennsylvania Department of Corrections, Defendant.	C.A. 01-1956

COPY
CLERK
US DISTRICT COURT
FILED

COMPLAINT

I. Jurisdiction

1. The court's authority to hear this putative class action derives from 28 U.S.C. Section 1343, a federal statute that confers district court jurisdiction over cases alleging constitutional violations. This pleading alleges that a specified category of segregated Pennsylvania prisoners is being systematically denied access to newspapers, magazines, and photographs of family members and friends pursuant to statewide Department of Corrections policies which prohibit those inmates from having such items in their cells. Grounding their claims on the free speech component of the

First Amendment, the putative class seeks declaratory and injunctive relief to end the ongoing abridgment of their civil rights. These allegations give the court a sound jurisdictional basis to hear this controversy.

II. Parties

2. Ronald Banks, the representative plaintiff in this Section 1983 action, is a sentenced inmate of the Pennsylvania Department of Corrections. He is confined in a maximum security administrative custody housing area of the State Correctional Institution at Pittsburgh known as the Long Term Segregation Unit. As a "Phase 2" inmate of the Unit, Mr. Banks (like all other Phase 2 Long Term Segregation Unit inmates in the prison system) is prohibited by Department policy from receiving newspapers and magazines unless they are of a religious or legal nature. Moreover, like all other LTSU Phase 2 inmates, he is prohibited by state prison policy from having photographs of family members and friends in his cell.

3. Jeffrey Beard, the defendant in this case, is the Secretary of the Pennsylvania Department of Corrections — the administrator of a penal system that operates the State Correctional Institution at Pittsburgh and all other state prisons that are located in the Western District of Pennsylvania. In that capacity, Mr. Beard perpetuates, implements, and enforces the policies that are challenged in this case.

4. Secretary Beard has acted under color of state law when systematically depriving Ronald Banks and other similarly situated inmates of their constitutional

right of free speech through enforcement of the challenged policies. He is sued in his official capacity.

III. Facts

5. Approximately two years ago, the Pennsylvania Department of Corrections established Long Term Segregation Units in certain of its prisons to house inmates who are said to be too disruptive, violent, or problematic to confine in other housing areas.

6. Two prisons in the Western District of Pennsylvania (SCI Pittsburgh and SCI Greene) have Long Term Segregation Units which (in combination) house more than a hundred prisoners on any given day, any one of whom can be placed on or be transferred out of Phase 2 status at the decision of prison officials. On information and belief, at least fifty LTSU inmates at any point in time are on Phase 2 status, although their identifies change on an ongoing basis.

7. As a matter of DOC policy, inmates are sequestered in Long Term Segregation Units (and on Phase 2 LTSU status) for indeterminate lengths of time. As such, they can be confined for many months and even years under the most restrictive and rigorous conditions existing in the state prison system.

9. Among other things, Long Term Segregation Unit prisoners are routinely locked inside their cells at least 23 hours a day; are routinely isolated, one inmate to a cell, throughout the day; are required to eat all meals in their cells; are rarely able to speak to or socialize directly with other prisons; are prevented by plexiglass barriers

from touching or embracing relatives and friends during their limited visitation opportunities; have sparse opportunities to make telephone calls to relatives and friends; are limited to a form of outdoor "recreation" that consists of occupying a small "exercise" cage an hour a day; and are consigned to an existence of rigid isolation and enforced idleness for periods of many months and even years.

10. In this already severely restrictive environment, Department of Corrections policy categorically prohibits Phase 2 Long Term Segregation Unit inmates from receiving newspapers or magazines directly from publishers, from prison libraries, or from any other source unless the publication is either religious or legal in nature.

11. Ronald Banks has been confined on Phase 2 status in SCI Pittsburgh's Long Term Segregation Unit since March 15, 2001. Over the course of this confinement (pursuant to DOC policy), SCI Pittsburgh officials repeatedly seized and kept from him copies of the Christian Science Monitor which were sent to him directly from the Christian Science Publishing Company through a subscription he had with the company.

12. The text of the Christian Science Monitor does not pose any meaningful risk to the security of the Long Term Segregation Unit, to the prison as a whole, or to the Department of Corrections. The content of the newspaper routinely addresses international news, health issues, governmental affairs, and other topics of current events that pose no threat to the security of the institution. It does not provide information regarding the means of escaping from prisons; does not facilitate or

advocate the manufacture or use of weapons, alcohol or drugs; does not contain sexual or pornographic images; does not contain racist or other such inflammatory language; does not advocate violence; and does not otherwise jeopardize the operation of the State Correctional Institution at Pittsburgh or the State prison system.

13. The paper on which the newspaper is printed does not pose any meaningful risk to the security of the Long Term Segregation Unit where Ronald Banks is confined, to any other area of the State Correctional Institution at Pittsburgh, or to the Department of Corrections as a whole.

14. The fact that the seized newspapers were sent to Ronald Banks directly from the publisher and were routinely subject to searches by prison personnel essentially eliminated the possibility that the materials were a means to smuggle contraband materials into him.

15. As a matter of routine practice and policy, thousands of inmates in the state prison system (including inmates in other forms of segregation) are allowed to receive newspapers, magazines, and other publications directly from publishers on an ongoing basis.

16. Denying Ronald Banks access to the Christian Science Monitor, to other comparable newspapers, or to magazines whose content does not otherwise offend Department of Corrections censorship policies, bears no reasonable relationship to legitimate penological purposes. The policy either serves no legitimate penological purpose or is an exaggerated response to a legitimate purpose.

17 Denying other Phase 2 Long Term Segregation Unit prisons access to newspapers, magazines, and other reading materials whose content does not otherwise offend Department of Corrections' censorship policy bears no reasonable relationship to legitimate penological interests. The policy either serves no legitimate purpose or is an exaggerated response to a legitimate purpose.

18 Ronald Banks is precluded as a result of his status as a Phase 2 Long Term Segregation Unit inmate from receiving and having photographs of his wife and other family members in his cell for the duration of his confinement on that status. This is also true, under Department of Corrections policy, for all other Phase 2 inmates.

19. As a matter of routine practice and policy, thousands of inmates in the Pennsylvania prison system (including inmates in other forms of segregation) are permitted to receive and possess photographs of family members and friends.

20. Categorically prohibiting Ronald Banks and all other Phase 2 Long Term Segregation Unit prisoners from receiving and keeping photographs of family members and friends in their cells bears no reasonable relationship to legitimate penological interests. The policy either serves no legitimate purpose or is an exaggerated response to a legitimate penological interest.

IV. Class Action Allegations

21. This lawsuit, for the following reasons, satisfies the prerequisites of the Federal Rules of Civil Procedure for the certification of a Rule 23(b) to class:

1) The class is so numerous that the joinder of all members of the class is impractical. There are more than a hundred inmates in the Long Term Segregation Units in the Western District of Pennsylvania. On information and belief, at least half of them at any given time are on Phase 2 status and, therefore, are subjected to the challenged policies. Moreover, the makeup or composition of the Phase 2 category of prisoners is fluid inasmuch as inmates are placed on Phase 2 status on a regular and ongoing basis during the course of the year. As such, joinder of all members of the class is impractical during the anticipated course of this litigation.

2) There are questions of fact that are common to the class. Among the questions are whether the policies challenged in the complaint actually exist, and if so, the reasons for them; the strength of the connection between the policies and the asserted reasons; and, ultimately, whether the policies offend the free speech rights of the class members.

3) The claims of the representative plaintiff is typical of the claims of the class. It is alleged that the challenged policies universally apply to all Phase 2 Long Term Segregated prisoners and preclude all Phase 2 inmates from receiving published newspapers, magazines, other comparable reading materials, and photographs.

7

As such, the unconstitutional policies cast a shadow over every member of the putative class

4) The representative plaintiff will fairly and adequately protect the interests of the class. The attorney who represents the named plaintiff is an experienced civil rights litigator. Moreover, there are no conflicts of interest involved in this case.

5) The defendant has acted or refused to act on grounds that are generally applicable to the class, thereby making final injunctive relief appropriate with respect to the class a whole. This is because the challenged policies have application to all members of the class.

V. Claim

22. The policy categorically denies Ronald Banks and other Phase 2 access to the kinds of publications involved in this case, offends the free speech component of the First Amendment to the United States Constitution.

23. The policy categorically denies Ronald Banks and other Phase 2 inmates the opportunity to receive and retain photographs of family members and friends violates the free speech component of the First Amendment to the United States Constitution.

VI. Equitable Relief

24 Ronald Banks and the inmates he represents have no adequate remedy at law to address the ongoing violations of their civil rights. As a result, the rights at stake will continue to be abridged unless and until the defendant is enjoined from doing so

25 The defendant's policy of denying Ronald Banks and similarly situated inmates access to photographs of family members and friends offends the free speech component of the First Amendment to the United States Constitution.

VII. Remedies

26. Ronald Banks and the putative class he seeks to represent respectfully request the following relief to redress the harm inflicted by the constitutional torts described above:

a. Certification of this case as a Rule 23(b)(2) class action on behalf of all current and future Phase 2 Long Term Segregation inmates who are or will be confined in Pennsylvania Department of Corrections prisons within the venue of the Western District of Pennsylvania;

b. The entry of a declaratory judgment holding that their right to free speech has been violated by the policies challenged in this case;

c. The issuance of preliminary and permanent injunctions prohibiting the Secretary from continuing to deny them access to the publications that are at issue here and to photographs of family members and friends;

d. An award of reasonable attorneys' fees, costs, and expenses generated by the prosecution of this case; and

e The granting of any other form of relief that is warranted by the circumstances of this case

Dated: October 18, 2001

Jere Krakoff, Esquire
PA I.D. No. 13701
1705 Allegheny Building
Pittsburgh, PA 15219
(412) 232-0276

On behalf of the Pennsylvania
Institutional Law Project

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RONALD BANKS, of himself and on behalf of all similarly situated prisoners who are confined or will be confined in Long Term Segregation Units of State Prisons located in the Western Judicial District of Pennsylvania,	)	
Plaintiff,	)	
v.	)	Civil Action No. 01-1956
JEFFREY BEARD, in his official capacity as Secretary of the Pennsylvania Department of Corrections,	)	
Defendant.	)	

DEFENDANT'S ANSWER TO COMPLAINT

AND NOW, comes the defendant, by his attorneys, D. Michael Fisher, Attorney General, Kemal Alexander Mericli, Senior Deputy Attorney General, Susan J. Forney, Chief Deputy Attorney General, Chief, Litigation Section, and files the following answer to plaintiff's complaint:

FIRST DEFENSE

Defendant responds to plaintiff's factual allegations as follows:

1. Paragraph 1 is a series of conclusions of law to which no response is required.

2. Admitted.

3. Admitted.

4. Paragraph 4 is a conclusion of law to which no response is required.

5. Admitted.

6. Admitted, correcting "identifies" to identities."

7. Admitted.

8. There is no paragraph 8.

9. Admitted.

10. Admitted.

11. Admitted in part and denied in part. The first sentence of paragraph 11 is admitted. After reasonable investigation defendant is aware that a copy of the Christian Science Monitor was confiscated as stated on one occasion but can neither admit or deny as yet if this occurred repeatedly -- although it should have occurred in each instance. To this extent the allegations are denied and strict proof demanded.

12. After reasonable investigation and reflection, defendant can neither admit or deny the allegations of paragraph 12 without an extensive review of the origins, rationale and operation

of the policy in question from the standpoint of prison security and general prison administration and the safe and effective operation of the LTSU program. Thus, they are denied and strict proof demanded.

13. After reasonable investigation and reflection, defendant can neither admit or deny the allegations of paragraph 13 without an extensive review of the origins, rationale and operation of the policy in question from the standpoint of prison security and general prison administration and the safe and effective operation of the LTSU program. Thus, they are denied and strict proof demanded.

14. After reasonable investigation and reflection, defendant can neither admit or deny the allegations of paragraph 14 without an extensive review of the origins, rationale and operation of the policy in question from the standpoint of prison security and general prison administration and the safe and effective operation of the LTSU program. Thus, they are denied and strict proof demanded.

15. Admitted.

16. This paragraph is a conclusion of law to which no response is required or if deemed factual is denied and strict proof is demanded.

17. This paragraph is a conclusion of law to which no response is required or if deemed factual is denied and strict proof is demanded.

18. Admitted.

19. Admitted.

20 This paragraph is a conclusion of law to which no response is required or if deemed factual is denied and strict proof is demanded.

21. All remaining paragraphs are conclusions of law to which no response is required or if deemed factual are denied.

SECOND DEFENSE

To the extent plaintiff seeks relief from the defendant in his official capacity for claims in the nature of constitutional violation, it is barred by the Eleventh Amendment.

THIRD DEFENSE

At no time has the defendant, either individually or in concert, deprived or sought to deprive the plaintiff of any right, privilege, or immunity secured to him by the Constitution or laws of the United States.

FOURTH DEFENSE

Defendant has at all times relevant to the subject matter of plaintiff's complaint acted in good faith with a reasonable belief in the lawfulness of his actions.

FIFTH DEFENSE

Defendant is entitled to qualified immunity.

SIXTH DEFENSE

The claims against defendant do not fall within the nine (9) categories enumerated by § 522 of Act 152, 42 Pa. C.S.A. § 8522, and are also barred by the Doctrine of Sovereign Immunity and Official Immunity.

SEVENTH DEFENSE

The defendant was at all times material acting pursuant to duty required by statute or statutorily authorized regulations, and therefore, said acts were within the discretion granted to him by state or statutorily authorized regulations.

EIGHTH DEFENSE

The complaint fails to state a claim upon which relief can be granted

NINTH DEFENSE

Any injuries received by plaintiff as are alleged in his complaint were the result of the actions of the plaintiff and the defendant cannot be held liable therefor.

WHEREFORE, defendant requests judgment in his favor and against plaintiff.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

By: Kemal Alexander Mericli

Kemal Alexander Mericli
Senior Deputy Attorney General
PA I.D. #27703

Susan J. Forney
Chief Deputy Attorney General
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL
6th Floor, Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Date: January 9, 2002

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RONALD BANKS, of himself and on behalf of all similarly situated prisoners who are confined or will be confined in Long Term Segregation Units of State Prisons located in the Western Judicial District of Pennsylvania,	)	
Plaintiff,	)	
v.	)	Civil Action No. 01-1956
JEFFREY BEARD, in his official capacity as Secretary of the Pennsylvania Department of Corrections,	)	
Defendant.	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Defendant's Answer to Complaint was served upon the following via first-class mail on January 9, 2002.

Jere Krakoff, Esquire
1705 Allegheny Building
Pittsburgh, PA 15219

Kamal Alexander Mericli
Senior Deputy Attorney General

OFFICE OF ATTORNEY GENERAL
6th Floor, Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219
Date: January 9, 2002

LONG TERM SEGREGATION UNIT

(LTSU)

RULES AND REGULATIONS

INMATE COPY

WHILE HOUSED IN THE LONG TERM SEGREGATION UNIT YOU ARE EXPECTED TO ADHERE TO THE RULES, REGULATIONS AND SCHEDULES CONTAINED HEREIN.

REVISED: JANUARY 2001

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LONG TERM SEGREGATION UNIT
JANUARY 2001

A. Purpose

The LTSU is an area consisting of maximum security housing coupled with extremely limited programming and privileges. You were referred for placement in the LTSU by either your parent institution or SMU. Placement criteria include but are not limited to: failure to complete an SMU program or failure to make adequate progress; demonstrated inability or unwillingness to conform to the requirements of general population; continued manifestation of a negative influence on the safety and security of the PA Department of Corrections; or participation in criminal activities which may threaten the community.

Final determination for placement is made by the Executive Deputy Secretary. Placement is anticipated to be long term, though progress reviews are conducted every 30 days.

Release from the LTSU will be determined by the Executive Deputy Secretary and will be based upon your positive adjustment. Unit staff will provide you with additional guidance.

B. Staffing

Superintendent – Phillip Johnson
Superintendent Assistant (Grievance Coordinator) – Tim Collins
Deputy Superintendent for Facility Management – William S. Stickman
Deputy Superintendent for Centralized Services – Mark A. Krysevig
Deputy Superintendent for Internal Security – Joel S. Dickson
LTSU Lieutenants – Lt. Anthony Bovo and Lt. Greg Mohring
Unit Manager – Rebecca Kessler
Counselors – Nick Bachism and Ken Martin
Psychology – Sandra Vujnovic
Hospital Administrator – Joan Delie
Chaplain – Father Terza
Librarian – Katherine Manners
CCPM – Debra Sauers
Inmate Accounting – Diane Detwiler
Business Manager – Paula Toski
Mail Department – Tonya Edwards
Parole – Dan Fedeanis
Major of the Guard – James McFetridge
Major of Unit Management – Chris Montenaro

C. General Rules

1. Privileges/Programming

a. Level 2

Level 2 is the most restrictive level of confinement and provides the least amount of privileges/programming. All new receptions begin on Level 2 for a minimum of 90 days. Inmates serving DC time will remain on Level 2 until they have completed their time or have had their remaining time set aside. Privileges afforded Level 2 inmates are as follows:

(1.) In cell activities

(2.) In cell counseling services

(3.) Employment as a unit janitor if approved by Unit Management Team

(4.) 1 Hour, 5 days per week of outside yard

(5.) Recreational and legal law library services

(6.) Legal and personal correspondence

(7.) In cell religious visits by a Chaplaincy

(8.) Three (3) showers per week

(9.) One (1) visit, non-contact, immediate family only, per month

(10.) Emergency phone calls only once approved and verified by Unit Management Team

b. Level 1

Level 1 provides for increased programming and privileges. They are available to those inmates who have demonstrated a satisfactory adjustment at Level 2. No DC cases can be placed in Level 1. Level 1 shall be the least restrictive available in the LTSU. In addition to those available to Level 2 inmates, the following privileges/programming will be available to Level 1 inmates (See Attachment A)

(1.) Two (2) visits, non-contact, immediate family only, per month

(2.) One (1) fifteen (15)-minute telephone call per month

(3) Commissary purchases of five dollars ($5 00) per week* (*Allowable items will be defined by PRC)

(4) Five (5) magazines, one (1) newspaper (daily exchange) and leisure books as determined by the Unit Management Team

(5) Programming In cell study (G E D. and Special Education only)

(6) Additional privileges/cell property may be authorized at the discretion of the Unit Management Team or PRC

c. Suspension of Privileges

Inmates may lose any privileges if their behavior is deemed to warrant such loss. This will be accomplished via Unit Team action, in response to a DC-134 report or misconduct, and shall be documented in the DC-14. The Unit Team shall have total authority regarding what privileges and for what period the privileges shall be forfeited These actions shall be administrative in nature.

2 Property

Inmate property of those admitted to the LTSU will be controlled in the following manner:

a No item made partially or entirely of glass will be permitted to be maintained by an LTSU inmate in his cell.

b. Any item of inmate property may be confiscated from an LTSU inmate if the inmate is using or altering the property in such a way that it is considered a threat to the safety and security of the institution

c. Indigent LTSU inmates may request stationary supplies should submit a request slip to the Unit Lieutenant. He/she will forward it to the Institutional Business Manager for verification Flexible security pens will be issued by unit staff.

d. The LTSU Sergeant or Lieutenant will ensure that the inmate is provided the essential articles for proper hygiene and comfort These articles will be supplied from the LTSU supplies when necessary

The items will include:

(1.) Coveralls (1 pair)
(2.) Underclothing (3 Shorts, 3 T-Shirts)
(3.) Socks (3 pairs)

(4) Bedding (1 Pillow Case, 2 Sheets, 1 Blanket)
(5) Personal Hygiene Essentials
(6) Towel and Washcloth

In addition the inmate may retain

(1) One (1) Box of legal and/or religious material
(2) One (1) Tablet of writing paper
(3.) Ten (10) Envelopes
(4.) One (1) Wedding band (no other jewelry)
(5.) One (1) Pair shower shoes
(6) Ten (10) Personal letters (photos will be confiscated and stored with inmate property.
(7.) Personal items (glasses, dentures, address book, etc.)

3 Visiting

The number of visitors permitted at any given time is limited to two (2) This may be two (2) adults or one (1) adult and one (1) child under the age of eighteen (18) The Shift Commander has the discretion to permit additional visitors such as small children and/or infants on a case-by-case basis Visiting hours are 8 00 AM to 3.30 PM, Monday through Friday

a Level 2

One non-contact weekday visit (of at least one hour) is permitted per month with immediate family only No holiday visits are permitted

b. Level 1

Two (2) non-contact weekday visits (of at least one hour) per month with any approved visitor is authorized No holiday visits are permitted

c. Legal visits are unlimited in number but are subject to space availability

4. Religious Privileges

Inmates confined in the LTSU are not permitted to attend religious services in the Chapel Inmates in LTSU shall be visited by a Facility Chaplain on a daily basis, when available in the facility and weekly by a Chaplain of the inmate's faith, if available.

5. Mail and Incoming Publications

a. All mail for inmates housed in the LTSU will be handled in accordance with **DC-ADM 803, "Inmate Mail and Incoming Publications."**

(1.) Incoming mail will be delivered to the LTSU each day that the mailroom is in operation and distributed to LTSU inmates by LTSU officers

(2.) Legal mail will be logged noting both the receiving inmate's name and number and the sender's name, address, date and time delivered. Legal mail will be opened in the presence of the inmate by the LTSU officers. The legal mail will be inspected for contraband but not read.

(3.) All regular mail will be inspected for contraband in the mailroom prior to delivery to the LTSU.

(4.) Inter-Institution mail, which arrives in the LTSU in a sealed envelope, will be treated as legal mail and opened and inspected in the presence of the inmate.

b. All outgoing mail is to be given to the Officer when the morning Food Trays are picked up. This also includes Request Slips and other correspondence to Staff.

6. Barber Services

All inmates are required to maintain grooming standards in accordance with Department policy DC-ADM 807, "Inmate Hygiene and Grooming."

LTSU inmates will be eligible for a haircut once each thirty (30) days.

When your pod is eligible you will be notified to sign up on the 2-10 Shift, and you will receive your haircut the following day.

7. Exercise

Inmates shall be permitted one (1) hour, five (5) days per week. All LTSU inmates will be exercised individually. Before leaving your cell, you will be strip searched. You will then be handcuffed behind your back and escorted to the yard. You will not be moved until properly secured. You are not permitted to take any thing with you to the yard.

On scheduled days, Block Officers will compile a list of inmates desiring to take yard, shower, or shave using the DC-707. Inmates must give a clear verbal or physical response for accepting or refusing the service.

8. Showers

Inmates in the LTSU will be offered a minimum of three showers per week absent any activity restriction.

You will be limited to ten (10) minutes per shower. Towel, shampoo and soap only will be permitted in the shower. You are not permitted to do laundry in the shower. No clothing will be worn to the shower. Shower schedules are Monday, Wednesday and Friday.

9. Shaving Privileges

Inmates in the LTSU will be offered a minimum of three opportunities to shave a week, absent any activity restriction.

Shaving kits will be passed out and collected the same day. Any damage to these items will result in a Misconduct and possible loss of shaving privileges.

COMMISSARY: (LEVEL I ONLY)	You will be permitted to purchase commissary bi-weekly. You will only be permitted to purchase items approved by PRC. You are not permitted to stockpile commissary items in your cells.
COMMISSARY SCHEDULE:	Every Other Tuesday – Slips passed out (AM) Following Day Wednesday – Slips picked up (AM) Following Tuesday – Commissary passed out (AM)
SICK CALL:	Fill out an Inmate Request Slip stating what it is you need to see the doctor for. Drop in Sick Call Box in the hallway on your way to Yard or give it to the Nurse.
LINEN AND JUMPSUITS:	Laundry services shall be provided on a weekly basis. Linen and towels shall be exchanged on Wednesday during the 2-10 shift. Issued linens include: one (1) towel, two (2) sheets, one (1) pillowslip and one (1) blanket. The Blanket provided is laundered once per year (minimum). Jumpsuits will be exchanged twice per week on Tuesdays and Fridays. Laundry bags will be given out for personal clothing. Bags will be picked up on Thursdays and returned on Mondays. All linen and clothing shall be used for its intended purpose only and not for curtains, rugs, or decorations. Any misuse of these items, alteration, tampering, or destruction shall result in a misconduct.

CUPS/SPOONS: Cups and spoons will be exchanged daily. All cups and spoons will be exchanged for new ones on a one for one basis. They will be passed out with the morning meal and collected following the evening meal.

LIBRARY: The inmate fills out an RHU Library Book Request Slip (attached) and passes it to a block officer to place in the in-house mail. You are permitted two leisure books at one time. You must return a book you have out to receive an additional book.

LAW LIBRARY: You must fill out an Inmate Request Slip, stating you wish to use the Law Library. Use will be granted on a First Come First Served Basis. You may use the Law Library for two (2) hours.

SMOKING/TOBACCO: No smoking tobacco products, smokeless tobacco or flame producing materials in the RHU/LTSU.

10 Changes in Levels

a. Upon reception into the unit, you will undergo an evaluation by the Unit Management Team who will communicate a baseline of behavior expectations.

b. The Unit Team shall develop a new Prescriptive Program Plan at that time. New Prescriptive Program Plan will be developed after each 30 days review.

c. The following factors will be considered prior to advancement to the next level:

(1.) Time in level.

(2.) Continued facility risk on or off the LTSU.

(3.) Number, type, and frequency of misconducts.

(4.) Involvement in self-improvement activities;

(5) Block behaviors

(a) quarters sanitation,

(b) personal hygiene and grooming,

(c) response to verbal and written orders,

(d) response to authority,

(e) interaction with other inmates,

(f) completion of specific goals as set by Unit Team;

(g.) demeanor with staff on the block and at periodic reviews

(h) work performance

d All movement from level 2 to level 1 will be through staff action by the Unit Team and documented by a vote sheet with final approval by the Superintendent

e The Facility Manager, upon the recommendation of both the LTSU Unit Manage-ment Team and the PRC, may temporarily "set aside" the inmate's accumulated DC time, assaultive and non-assaultive, to allow the inmate to advance to Level 1 Time set aside may de done in steps, particularly with those inmates who have substantial DC time to serve.

(1.) The PRC may continue to reduce the permanent DC time for non-assaultive misconducts, which has been "set aside," at periodic reviews.

(2) If an inmate successfully completes the LTSU program, any "set aside" DC time shall be eliminated

(3) While assigned in the LTSU, an inmate shall continue to receive a credit towards DC time to be served

(4) If the inmate receives a misconduct while in the LTSU or does not complete the program, any remaining DC time shall be reinstated.

f Inmates can be demoted by the same procedure. However, if an inmate is found guilty of a misconduct for which a period in disciplinary custody is the penalty, the inmate shall automatically be demoted back to Level 2, and any DC time which was previously set aside shall be restored

g Inmates may be considered for release at any time and at least annually. The Unit Team and Facility Manager will forward recommendations to the Regional Deputy Secretary. Final approval is by the Executive Deputy Secretary.

h. Release can be to a SMU, RHU, general population or other appropriate facility depending on the specific needs of the inmate.

11 Counts

a All inmate counts will be conducted in accordance with Department Policy 6.3.1.

b. Seven routinely scheduled counts shall be taken daily. You are required to stand and be in clear view during the following counts: 0600, 1230, 1530 and 2100

12 Cell Searches/Security Inspections/Cell Rotation

a All cells shall be subjected to a security inspection at least three times per week

b All cells shall be thoroughly searched at least once per week

c. All inmates will be required to change cells monthly

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
SCI-Pittsburgh
412-761-1955

June 4, 2001

SUBJECT: ADDENDUM TO LTSU INMATE HANDBOOK
RE: IN-CELL PROGRAMMING

TO: All LTSU Inmates

FROM: Joey S. Dickson
Deputy Superintendent
Internal Security

BY: Debra K. Sauers
Corrections Classification & Program Manager

In-cell programming is available to Level 1 LTSU inmates. Level 1 inmates who are interested in participating should discuss this with their counselor. The unit management team will recommend participation to the PRC. PRC will review and approve or disapprove the recommendation.

Programming is currently available in the following areas: substance abuse; anger/violence management, life skills; parenting skills; and effective emotional expression.

Inmates may participate in one program at a time. Upon completion of a program, another program may be recommended for approval.

JSD/DKS.lp

cc: Superintendent Johnson
Deputy Stickman
Deputy Krysevig
Major McFetridge
Major Montenaro
RHU Lieutenants
A-3 Sergeants
File (2)

LTSU RULES:

1	You must have your jumpsuit all the way on any time you are out of your cell. The ONLY exception will be going to and coming from the shower. You are NOT PERMITTED to wash your laundry in the shower.
2	You are NOT PERMITTED to pass, pick up or trade off any materials or items while you are housing in this Unit. Doing so will result in a Misconduct.
3	You are NOT PERMITTED to cover your cell door. Also, you are NOT PERMITTED to cover, block or attach anything to the cell light fixture or air vent.
4	You are NOT PERMITTED to have anything attached to the walls of your cell. This includes, but is not limited to Pictures, Posters, Cards, etc.
5	Defacing any part of the cell by writing, drawing or any other method will not be permitted. This includes: Lights, Desk, Cabinet, etc.
6	Loud talking or yelling from cell to cell WILL NOT BE PERMITTED at any time.
7	It will be your responsibility to maintain your cell in a clean and orderly manner. You will be issued cleaning materials once a week for this purpose. Proper care and attention to State Property such as: Mattress, Pillow, Sheets, Towels, Jumpsuits, etc. must be exercised.
8	You will be permitted only State issued clothing while housed in the Unit. This will consist of: one (1) pair of State "Sneakers", three (3) pairs of underwear, three (3) pairs of socks, three (3) T-shirts and one (1) jumpsuit.
9	You are not permitted to throw anything out of your cell. Trash will be collected periodically by the Block Officer on a schedule to be determined. Anyone throwing food from the Food Trays, will be fed with inserts only, and will receive a Misconduct.
10	In order to facilitate being searched upon leaving your cell, you MUST PLACE YOUR HANDS BEHIND YOU TO BE HANDCUFFED. You will step out of your cell to be Searched. When returning from the Exercise Yard, you will enter your cell and place your hands through the Food Slot to be uncuffed. You will remain fully dressed at all times.
11	Whenever you are out of the Unit, you will not attempt to introduce any contraband into the Unit upon your return. This includes ANYTHING that was not in your possession when you left the Unit.
12	Under NO CIRCUMSTANCES are you to mark, write on, or otherwise deface or damage the Food Trays provided to you.
13	You are required to stand and be in Clear View of the Officers during the following Security Checks (COUNTS): 0600, 1230, 1530, 2100
14	If you receive a Newspaper, you must turn in the whole Newspaper from the prior day (e.g. to get Tuesday's paper, you must turn in Monday's Newspaper).

NOTE:	ANY NON-COMPLIANCE WITH THE AFOREMENTIONED REGULATIONS WILL SUBJECT YOU TO DISCIPLINARY ACTION. YOU ARE TO OBEY ANY ORDER GIVEN TO YOU BY A STAFF MEMBER. EVEN THOUGH IT MAY, AT TIMES, CONFLICT WITH THE SCHEDULE AND/OR REGULATIONS AS STATED.

JSD/cr

Joel S. Dickson
Deputy Superintendent for Internal Security

I HAVE READ AND UNDERSTAND THE ABOVE SCHEDULE.

_____ / _____ _____
Inmate Signature DC Number Date

_____ _____
Witness (Officer) Signature Date

LONG TERM SEGREGATIO NIT PRIVILEGES

	PRIVILEGES		PROGRAM SERVICES	
LEVEL II	Smoking:	None	Medical/Dental:	Screened on Unit
	Visits:	One (1) per month, non-contact weekdays only, immediate family Legal are unlimited	Mental/Health:	Seen on unit.
	Exercise	One (1) hour per day, five (5) days per week	Religious:	Cell visits by Chaplains
	Telephone:	Emergency only		
	Radio/Tv:	None	Counseling:	In cell
	Commissary:	None	Activities:	In cell
	Legal/Religious Materials:	One (1) records center box	Education:	None
	Mail:	Legal and personal correspondence	Employment:	Unit Janitor
	Personal Property	Shower shoes, dictionary, ten (10) letters, eyeglasses, address book, and dentures	Library:	Two (2) leisure books at a time
	Showers:	Three (3) per week	Pay:	None
LEVEL I	Smoking:	None	Medical/Dental	Screened on Unit
	Visits:	Two (2) per month, non-contact weekdays only, immediate family Legal are unlimited	Mental/Health:	Seen on Unit
	Exercise:	One (1) hour per day, five (5) days per week	Religious:	Cell visits by Chaplains
	Telephone:	One (1) fifteen (15) minute call per month (non accumulative)	Counseling:	In cell
	Radio/Tv	None	Activities:	In cell
	Commissary:	Five dollars ($5.00) per week. ($10.00 every two weeks) (Items as defined by the Unit Team)	Education:	GED and Special Education, in cell study only
	Legal/Religious Materials:	One (1) records center box		
	Mail:	Legal and personal correspondence, five (5) magazines, one (1) newspaper (daily exchange)	Employment:	Unit Janitor
	Personal Property	Shower shoes, dictionary, ten (10) letters, eyeglasses, address book, and dentures	Library:	Two (2) leisure books at a time
	Showers:	Three (3) per week	Pay:	As per DC 910 Inmate Compensation System

6.5.1, Administration of Security Level 5 Housing Units, Section 3, Long Term Segregation Units — *Attachment A*

COMMONWEALTH OF PENNSYLVANIA
Department of Corrections
SCI-Pittsburgh, Internal Security
(412) 761-1955 Ext 218
February 8, 2001

SUBJECT: "GRATERFRIENDS"

TO: LTSU Inmates

FROM: Joel S. Dickson
Deputy Superintendent for Internal Security

The publication "GRATERFRIENDS" is characterized as a newsletter It is not legal mail. As such, it is denied to Level 2 inmates and permitted for Level 1 inmates

JSD/cr

cc. Superintendent Johnson
Deputy Stickman
Deputy Krysevig
Ms. Rebecca Kessler
RHU Lieutenants
Mailroom

RT II

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
P O BOX 598
CAMP HILL, PA 17001

[redacted]ICIAL INMATE GRIEVANCE
[redacted]IAL REVIEW RESPONSE

GRIEVANCE NO PIT-0493-01

[redacted] (Name & DC No.)	FACILITY	HOUSING LOCATION	GRIEVANCE DATE
[redacted] Ronald Banks, DZ-5843	SCI-Pittsburgh	A3 B-1006	4/25/01

[redacted]ollowing is a summary of my findings regarding your grievance

[redacted]tems that were confiscated were deemed not to be religious material by Deputy Dickson and the [redacted]plancy Department. You are currently a Level 2 in the LTSU and are not permitted magazines or [redacted]ewspapers.

RECEIVED
SCI-PITTSBURGH
MAY 02 2001
SUPERINTENDENT
ASSISTANT II

Posted
MAY 02 2001
SCI Pittsburgh

Supt. Johnson/File
Lt. Mohring
DC-15
Inmate

[redacted] Print Name and Title of Grievance Officer	SIGNATURE OF GRIEVANCE OFFICER	DATE
[redacted] Lt.	Carol A Beers	5-2-01

WEEKLY BOOK DELIVERY SCHEDULE FOR A-3

August 2002

FROM: JAMES WEST

Monday	Tuesday	Wednesday	Thursday	Friday
NOTE: NEW REQUESTS FOR BOOKS MUST BE RECEIVED MONDAY MORNING TO INSURE THURSDAY BOOK DELIVERY.			1	2
5 NEW BOOK REQUESTS DUE FOR AUGUST 8TH DELIVERY	6	7	8 BOOK DELIVERY	9
12 NEW BOOK REQUESTS DUE FOR AUGUST 15TH DELIVERY	13	14	15 BOOK DELIVERY	16
19 NEW BOOK REQUESTS DUE FOR AUGUST 22ND DELIVERY	20	21	22 BOOK DELIVERY	23
26 NEW BOOK REQUESTS DUE FOR AUGUST 29TH DELIVERY	27	28	29 BOOK DELIVERY	30

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17-1[illegible] ASHINGTON ST. FAX/201/569-85[illegible]
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RENEWAL LIST NO	3292	9
ACCT NO	IN-05-5-85855-09	
RG DATE	DEC 20, 2001	

6000-12462

TITLE CODE	QTY	NAME OF PUBLICATION	FOR	STARTING	★ PRICE UNIT	★ PRICE EXTENSION
THIS RENEWAL LIST INCLUDES ALL SUBSCRIPTION ORDERS PLACED WITH THE PUBLISHERS BY EBSCO AS YOUR AGENT AND INVOICED THROUGH 11/21/2001. IF A RECENT CHANGE IN YOUR RENEWAL LIST, SUCH AS CANCELLATION OR ADDITION DOES NOT APPEAR, IT MISSED THE RENEWAL LIST PRODUCTION CUT-OFF DATE INDICATED ABOVE. THESE CHANGES ARE RECORDED IN OUR FILE AND WILL BE INCORPORATED INTO YOUR RENEWAL INVOICE. SEND TO - 30-10 STATE CORR INSTITUTE SCIP LIBRARY 3001 BEAVER AVE PITTSBURGH PA 15233 TERM SHOWN BELOW WILL BE ORDERED NONCANCELLABLE APPLIES AFTER RENEWAL ORDER IS PROCESSED						
311361115 *(00859)	1	ERIE TIMES NEWS /MON-SAT/ /BY MAIL/ /ALL EXC CERTAIN ZIP CODES/ **OR** /INCORPS/ ERIE MORNING NEWS 8916857	1 YR	01-01-2002	16600	16600
377351062 *(00860)	1	GREENSBURG TRIBUNE REVIEW /DAILY & SUNDAY/ /BY MAIL/ **OR** VOL/TITLE INFO NEEDED 8916857 PUB ID MD3284	1 YR	01-01-2002	24920	24920
596245878 *(00861)	1	MORNING CALL /DAILY AND SUNDAY/ /BY MAIL/ **L2** **DS** 8916857 PUB ID 9469626	1 YR	05-01-2002	41352	41352
627886003 (00862)	1	NEW PITTSBURGH COURIER - CITY EDITION **L1** **SW** PUBL WEDNESDAY & SATURDAY 8916857	1 YR	06-01-2002	4000	4000
~~638788008 (00863)~~	~~1~~	~~NEW YORK TIMES - METRO NY ED /INCLS/ SECTIONS 4 5 6 10 /7 DAY/ /BY MAIL/ **L1** **DS** /INCLS/ NEW YORK TIMES MAGAZINE COMBINATION VOL 106, 2002 8916857~~	~~1 YR~~	~~02-01-2002~~	~~56160~~	~~56160~~
636555085		~~PITTSBURGH - REGULAR ED /AM/~~	1 YR	04-01-2002	4200	4200
		E= 6 Q= 6 BL= 0 SO=				

PAID
CK NO 63666
DATE 3-19-02
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	ACCT NO	TN-DS-S-85055-00
AC	DATE	DEC 20, 2001

TITLE CODE	QTY	NAME OF PUBLICATION	FOR	STARTING	★ PRICE UNIT	★ PRICE EXTENSION
[redacted] (00064)	1	AC **WK** PUBL WEEKLY 8916857 (SP)				
543831308 (00065)	1	NOTICIAS DEL MUNDO /FOR US/ **DA** 8916857	1 YR	02-01-2002	12480	12480
[redacted] (00066)	1	PATRIOT NEWS C-W SUNDAY PATRIOT-NEWS **L1** COMBINATION 8916857 **DS**	1 YR	01-01-2002	32720	32720
39702009 (00067)	1	PHILADELPHIA DAILY NEWS /DAILY/ /BY MAIL/ **DA** PUBL MON THRU SAT 8916857	1 YR	01-01-2002	27500	27500
39775005 (00068)	1	PHILADELPHIA INQUIRER /SUNDAY/ /BY MAIL/ **SUN 8916857	1 YR	04-01-2002	17900	17900
39923001 (00069)	1	PHILADELPHIA TRIBUNE /ONCE A WEEK/ **WK** NONCANCELLABLE 8916857	1 YR	05-01-2002	3100	3100
698755543 (00070)	1	PITTSBURGH TRIBUNE REVIEW /DAILY & SUNDAY/ /BY MAIL/ **DS** 8916857 PUB ID M07502	1 YR	05-01-2002	24920	24920
39281001 (00071)	1	[redacted] DOMESTIC ED /**/ FOR US & POSSESSIONS ONLY/ SURFACE MAIL/ **OR** 8916857 (SP)	1 YR	06-01-2002	7613	7613
18170770 (00072)	1	USA TODAY /**/ /THE NATIONS NEWSPAPER/ /US LIBRARIES AND INSTITUTIONS ONLY/	1 YR	12-01-2001	12900	12900
		E= B Q= 8 BL= 0 SO= 0				

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TITLE NUMBER	QTY	NAME OF PUBLICATION	TYPE	SUBSCRIPTION NUMBER	TERM		PRICE	EXTENSION
313361115	1	ERIE TIMES NEWS /MON-SAT/ /BY MAIL/ /ALL EXC CERTAIN ZIP CODES/ /INCORPS/ ERIE MORNING NEWS	DA	1165391	U 1 YR	R	16600	16600
377351002	1	GREENSBURG TRIBUNE REVIEW /DAILY & SUNDAY/ /BY MAIL/ VOL 117 STARTS 01-2002))*VOL 117 PID# M03284	DR	1165759	U 1 YR	R	24920	24920
596245878	1	MORNING CALL /DAILY AND SUNDAY/ /BY MAIL/ PID# 9469828	DS	1168894	U 1 YR	R	42352	42352
827806003	1	NEW PITTSBURGH COURIER - CITY EDITION PUBL WEDNESDAY & SATURDAY VOL 93 STARTS 06-2002	SW	1161134	U 1 YR	R	5000	5000
836555002	1	[illegible] - REGULAR ED /**/ 05-02 CLAIMS ACCEPTED FOR SPEC ED-YOUR CHILD "CORRECTED" CHART ONLY-COMPLETE CORRECTED VERSION MUST BE PURCHASED AS SINGLE ISSUE UNLESS SUB IS HOSPITAL OR DOCTORS OFFICE PUBL WEEKLY VOL 139 STARTS 04-2002	WK	1167152	U 1 YR	R	4200	4200
843831308	1	NOTICIAS DEL MUNDO /FOR US/ VOL 22 STARTS 02-2002	DA	1167224	U 1 YR	R	13480	13480
680226008	1	PATRIOT NEWS - MORNING-DAILY /COMES ALSO WITH/ SUNDAY PATRIOT NEWS PUBL DAILY EXCEPT CHRISTMAS NONCANCELLABLE	DA					
680226180	1	PATRIOT NEWS C-W SUNDAY PATRIOT-NEWS COMBINATION VOL 53 STARTS 01-2002	DS	1167444	U 1 YR	R	23380	23380
689702009	1	PHILADELPHIA DAILY NEWS /DAILY/ /BY MAIL/ PUBL MON THRU SAT	DA	1161583	U 1 YR	R	36100	36100
688775005	1	PHILADELPHIA INQUIRER /SUNDAY/ /BY MAIL/ PID# 47790283	SU	1167539	U 1 YR	R	17900	17900
689923001	1	PHILADELPHIA TRIBUNE /ONCE A WEEK/ NONCANCELLABLE CONTINUED ON NEXT PAGE	WK	1167540	U 1 YR	R	4100	4100

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		VOL 117 STARTS 05-2002						
755543	1	PITTSBURGH TRIBUNE REVIEW /DAILY & SUNDAY/ /BY MAIL/ PID# M07502	DS	11875750	U 1 YR	R	24920	24920
					05/01/2002			
2081001	1	TIME - DOMESTIC ED /**/ /FOR US POSSESSIONS ONLY/ /SURFACE MAIL/ CLAIMS MUST BE MADE WITHIN 12ISS OF PUBL DATE/AFTER 12ISS THE SINGLE ISSUE PRICE IS CHARGED/NO SUBS EXTENDED FOR OUT OF STOCK ISSUES MUST CLAIM BY MONTH DAY & YEAR	DR	11828440	U 1 YR	R	7813	7813
					06/01/2002			
		VOL 180 STARTS 08-2002						
70770	1	USA TODAY /**/ /THE NATIONS NEWSPAPER/ /US LIBRARIES AND INSTITUTIONS ONLY/ /SURFACE MAIL/ PUBL MONDAY THRU FRIDAY EXCEPT MAJOR HOLIDAYS	DA	11883800	U 1 YR	R	12900	12900
					12/01/2001			
		VOL 20 STARTS 12-2001						
70284	1	EL VOCERO DE PUERTO RICO	DA	11831880	U 1 YR	R	25000	25000
					07/01/2002			
		PLEASE SUPPLY YOUR TAX EXEMPT #						

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RHU LIBRARY BOOK REQUEST SLIP

LAST NAME _____ FIRST NAME_____

DOC#_____ CELL_____

INDICATE SELECTIONS BELOW.

__GENERAL FICTION	__SCIENCE FICTION	__WESTERNS
__FANTASY	__ROMANCE	__SPANISH FICTION
__PHILOSOPHY	__RELIGION	__LANGUAGE
__SCIENCE	__ARTS	__LITERATURE
__HISTORY	__GEOGRAPHY	__BIOGRAPHY
__SPANISH NON-FIC.	__ _____	

(REFERENCE MATERIALS DO NOT CIRCULATE.)

SPECIFIC TITLES THAT YOU ARE REQUESTING

1._____

2._____

3._____

YOU WILL NOT RECEIVE MATERIALS UNTIL ALL PREVIOUSLY CHECKED OUT MATERIALS ARE RETURNED. ONLY PAPERBACKS WILL BE SENT TO THE RHU. IF YOUR SELECTION IS NOT AVAILABLE, A SUBSTITUTION WILL BE MADE.

DO NOT WRITE BELOW THIS LINE!!

TITLES OF BOOKS SENT DUE_____

1._____

2._____

3._____

INMATE SIGNATURE & NUMBER_____

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027751858 (00001)	1	AIR & SPACE SMITHSONIAN /**/ **BM** SUB INCLS MEMBERSHIP IN NATIONAL AIR AND SPACE MUSEUM MEMBERSHIP TITLE 8916819	1 YR	01-01-2002	2200	2200
071685002 (00002)	1	ARCHITECTURAL DIGEST /**/ /SURFACE MAIL/ **L1** **MO** 8916819 (SP)	1 YR	04-01-2002	3995	3995
083560680 (00003)	1	ARTISTS MAGAZINE /**/ **MO** 8916819 (SP)	1 YR	04-01-2002	2600	2600
107759003 (00004)	1	BASEBALL DIGEST /**/ **L1** **MO** 8916819 (SP)	1 YR	01-01-2002	2394	2394
108243007 (00005)	1	BASKETBALL DIGEST /**/ /SURFACE MAIL/ **L1** **MO** PUBL JAN FEB MAR APR MAY JUN NOV DEC 8916819 (SP)	1 YR	12-01-2002	2394	2394
124875006 (00006)	1	BLACK ENTERPRISE /**/ **MO** NONCANCELLABLE PUBLISHER WILL NOT ISSUE A REFUND FOR DUPLICATE ORDERS OF $2.00 OR LESS. 8916819 (SP)	1 YR	06-01-2002	1795	1795
125137000	1	BLACK SCHOLAR	1 YR	01-01-2002	8500	8500
		E= 7 Q= 7 BL= 0 SO=	0			

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AA	DATE	DEC 20, 2001

TITLE CODE	QTY	NAME OF PUBLICATION	FOR	STARTING	★ PRICE UNIT	★ PRICE EXTENSION
(00007)		AA **LI** **QR** PUBL WITHIN SEASONS VOL 32 2002 8916819 (SP)				
180346009 (00008)	1	CAR CRAFT MAGAZINE /**/ **MO** /INCORPS/ MUSCLE CAR REVIEW 8916819 (SP)	1 YR	06-01-2002	1500	1500
180379000 (00009)	1	CAR AND DRIVER /**/ /SURFACE MAIL/ **MO** 8916819 (SP)	1 YR	04-01-2002	2200	2200
197693005 (00010)	1	CHESS LIFE **LI** NONCANCELLABLE VOL 57 2002 8916819 (SP) **MO**	1 YR	03-01-2002	3000	3000
210587515 (00011)	1	CIVILIZATION /DISCONTINUED EFF OCT 2000/ **BA** PUBL JAN MAR MAY JUL SEP NOV 8916819	DISCONTINUED***			
234883858 (00012)	1	CONSUMER REPORTS /**/ **IR** /INCLS/ CONSUMER REPORTS BUYING GUIDE IN DECEMBER CONSUMER REPORT PUBL MO WITH BUYING GUIDE PUBL DEC COMBINATION 8916819 (SP)	1 YR	02-01-2002	2600	2600
242696003 (00013)	1	COUNTRY SONG ROUNDUP /DISCONTINUED/ **QR** PUBL JAN APR JUL OCT 8916819	DISCONTINUED***			
254699002 (00014)	1	CYCLE WORLD /**/ /SURFACE MAIL/ **MO** /INCORPS/ CYCLE 8916819 (SP)	1 YR	05-01-2002	2200	2200
		E= 7 Q= 7 BL= 0 SO= 0				

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		AA				
267392298 (00015)	1	DETAILS MAGAZINE /**/ **LI** 8916819 **R0R** (SP)	1 YR	03-01-2002	1500	1500
277315162 (00016)	1	DISCOVER /**/ 8916819 **M0** (SP)	1 YR	05-01-2002	2995	2995
281742510 (00017)	1	DOWN BEAT /**/ /SURFACE MAIL/ NONCANCELLABLE 8916819 **M0** (SP)	1 YR	05-01-2002	3500	3500
288308000 (00018)	1	EBONY /INCORPS/ EM /EBONY MAN MAGAZINE/ /**/ /SURFACE MAIL/ VOL 57, 2002 CANCELLATIONS ACCEPTED ONLY IN CASE OF DUPLICATE ORDERS OR CLOSING OF A SCHOOL - REQUESTS HAVE TO BE SUBMITTED PRIOR TO MAILING OF THE FIRST ISSUE 8916819 **M0** (SP)	1 YR	06-01-2002	2200	2200
314164005 (00019)	1	ESQUIRE /**/ **LI** 8916819 **M0** (SP)	1 YR	07-01-2002	1594	1594
314562000 (00020)	1	ESSENCE /**/ 8916819 **M0** (SP)	1 YR	06-01-2002	2200	2200
346909005 (00021)	1	FOOTBALL DIGEST /**/ **LI** PUBL MONTHLY WITH MAY/JUN AND JUL/AUG ISSUES COMBINED 8916819 **I0R** (SP)	1 YR	02-01-2002	2394	2394
347436008 (00022)	1	FORBES /**/ /INCLS/ FORBES ASAP/ FORBES FYI/ FORBES MAGAZINE ANNUAL REPORT ON AMERICAN INDUSTRY FORBES 400 IS OCT ISS - FORBES ANNUAL DIRECTORY IS APR ISS COMBINATION **BW**	1 YR	01-01-2002	5995	5995

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		AA 8916819 (SP)				
350466009 (00023)	1	FORTUNE - DOMESTIC ED /**/ /FOR US/ **BW** 8916819 (SP)	1 YR	01-01-2002	6995	6995
374279743 (00024)	1	GQ - US EDITION /**/ /SURFACE MAIL/ **L1** **MO** 8916819 (SP)	1 YR	06-01-2002	2000	2000
389368002 (00025)	1	HEAVY METAL **BM** PUBL JAN MAR MAY JUL SEP NOV 8916819 BR1 2001	1 YR	04-01-2002	1795	1795
396467003 *(00026) F	1	HOLA /SURFACE MAIL/ **WK** PUBL ON THURSDAY 8916819 (SP)	1 YR	06-01-2002	17307	17307
455198820 (00027)	1	ISLANDS /**/ **IR** PUBL FEB MAR APR JUN AUG OCT NOV & DEC 8916819	1 YR	04-01-2002	2400	2400
462951005 (00028)	1	JET /**/ /SURFACE MAIL/ **WK** PUBL MONDAYS CANCELLATIONS ACCEPTED ONLY IN CASE OF DUPLICATE ORDERS OR CLOSING OF A SCHOOL - REQUESTS HAVE TO BE SUBMITTED PRIOR TO MAILING OF THE FIRST ISSUE 8916819 (SP)	1 YR	05-01-2002	3800	3800
464710342 (00029)	1	JOE WEIDERS MENS FITNESS /**/ /SURFACE MAIL/ **MO** NONCANCELLABLE 8916819	1 YR	01-01-2002	2197	2197
464717503 (00030)	1	JOE WEIDERS MUSCLE & FITNESS /**/ /CA/	1 YR	04-01-2002	3497	3497
		E= 8 Q= 8 BL= 0 SO=	0			

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		AA **MO** NONCANCELLABLE 8916819 (SP)				
517580908 (00031)	1	LATINA /NY//**/ **MO** 8916819 (SP)	1 YR	05-01-2002	2000	2000
524472115 (00032)	1	LIBRARY OF CONGRESS ASSOCIATES MEMBERSHIP /DISCONTINUED EFF OCT 2000/ **OR** 8916819	DISCONTINUED***			
611653007 (00033)	1	NATIONAL ENQUIRER /**/ **L1** **WK** 8916819	1 YR	04-01-2002	5696	5696
612117002 (00034)	1	NATIONAL GEOGRAPHIC /**/ /FOR US & SOUTH AMERICA/ **L1** **MO** /COMES ALSO WITH/ NATL GEOGRAPHIC SOC MEMBERSHIP 8916819 (SP)	1 YR	02-01-2002	3400	3400
667791008 (00035)	1	OUTDOOR LIFE /**/ **IR** PUBL MONTHLY WITH JUN/JUL & DEC/JAN ISSUES COMBINED 8916819 (SP)	1 YR	06-01-2002	1197	1197
681727002 (00036)	1	PEOPLE WEEKLY /**/ /FOR US/ /SURFACE MAIL/ **WK** 8916819 (SP)	1 YR	07-01-2002	11395	11395
689791002 (00037)	1	PHILADELPHIA MAGAZINE /**/ **MO** /INCLS/ PHILADELPHIA MAGAZINES MID-ATLANTIC TRAVEL COMBINATION 8916819	1 YR	02-01-2002	1800	1800
698653003 (00038)	1	PITTSBURGH MAGAZINE /US ONLY/ /INCORPS/ PITTSBURGH PROSPECTS **MO**	1 YR	01-01-2002	1795	1795
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		AA REFUNDS ONLY GIVEN WITHIN 6 MOS ON AN 1YR SUBSCRIPTION 8916819 (SP)				
708127006 (00039)	1	POPULAR MECHANICS : ENGLISH EDITION /**/ **L1** **MO** 8916819 (SP)	1 YR	06-01-2002	21.97	21.97
708336006 (00040)	1	POPULAR SCIENCE /**/ **MO** 8916819 (SP)	1 YR	02-01-2002	19.95	19.95
711578062 (00041)	1	POWERLIFTING USA /FOR US/ **MO** /COMES ALSO WITH/ POWER HOTLINE 8916819	1 YR	01-01-2002	31.95	31.95
714240017 (00042)	1	PREMIERE /**/ /SURFACE MAIL/ **MO** 8916819 (SP)	1 YR	01-01-2002	22.00	22.00
715629002 (00043)	1	PREVENTION /**/ /SURFACE MAIL/ /ALL EXCEPT CANADA/ **L1** **MO** 8916819 (SP)	1 YR	01-01-2002	21.97	21.97
735846008 (00044)	1	PSYCHOLOGY TODAY /**/ **L1** **BM** CANCELLATIONS ARE ACCEPTABLE DURING THE FIRST 3 MONTHS OF THE SUBSCRIPTION TERM ONLY 8916819 (SP) ENGLISH EDITION (S)	1 YR	05-01-2002	21.00	21.00
753741008 (00045)	1	READING EAGLE /SUNDAY/ /BY MAIL/ **L1** **SU** 8916819	1 YR	03-01-2002	103.60	103.60
782788013 (00046)	1	RIGHT ON MAGAZINE /NY/ **MO** NONCANCELLABLE 8916819 (SP)	1 YR	08-01-2002	21.95	21.95
		E= 8 Q= 8 BL= 0 SO=	0			

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		AA				
782962009 *(00047)	1	RING /NY/ /RENEWAL ORDERS ONLY/ /SURFACE MAIL/ **BA** 8916819 (SP)	1 YR	01-01-2002	1900	1900
787846002 (00048)	1	ROLLING STONE /**/ **BW** PUBL EVERY OTHER THURSDAY CANCELLATIONS NOT ACCEPTED AFTER FIFTEEN ISSUES HAVE HAVE BEEN SERVED 8916819 (SP)	1 YR	06-01-2002	1994	1994
795330265 (00049)	1	SALUDABLE /UNABLE TO CONTACT PUBL/ **MO** 8916819				
844535005 (00050)	1	SPORTING NEWS /**/ **OR** 8916819 (SP)	1 YR	04-01-2002	7800	7800
844927004 (00051)	1	SPORTS ILLUSTRATED /**/ /FOR US/ /SURFACE MAIL/ **DR** PUBL WEEKLY WITH SPECIAL ISSUES IN FEB & SEP 8916819 (SP)	1 YR	05-01-2002	8649	8649
918171828 (00052)	1	USA TODAY BASEBALL WEEKLY /US ONLY/ **WK** **RL** 8916819	1 YR	05-01-2002	3995	3995
924034358 *(00053)	1	UPSCALE /THE SUCCESSFUL BLACK MAGAZINE/ **IR** PUBL MONTHLY WITH DEC/JAN JUN/JUL SEP/OCT ISSUES COMB -8916819	1 YR	06-01-2002	1495	1495
932769680 (00054)	1	VIBE /**/ **AC** 8916819 (SP)	1 YR	05-01-2002	1195	1195
934579004	1	VILLAGE VOICE /INCORPS/ VLS	1 YR	02-01-2002	7900	7900
		E= 9 Q= 9 BL= 0 SO= 0				

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(00055)		**ALI** AA **WK** VOL 67, 2002 8916819 (SP)				
955173000 (00056)	1	WHISPERING WIND **B*** PUBL FEB APR JUN AUG OCT DEC 8916819	1 YR	02-01-2002	2100	2100
981-106248 (00057)	1	ZIFF DAVIS SMART BUSINESS /**/ /SURFACE MAIL/ **MO** /FORMERLY/ ZIFF DAVIS SMART BUSINESS FOR THE NEW ECONOMY 8916819 (SP)	1 YR	08-01-2002	2000	2000
981-107345 (00058)	1	ZIFF DAVIS SMART BUSINESS FOR THE NEW ECONOMY /**/ /SURFACE MAIL/ **MO** /NOW CALLED/ ZIFF DAVIS SMART BUSINESS /EFF 05-01/ 8916819				
		PLEASE SUPPLY YOUR TAX EXEMPT #:				
		SHIP-TO SUB-TOTAL				190497

Time
Newsweek

E= 3 Q= 3 BL= 0 SO= 0

POLICY STATEMENT
Commonwealth of Pennsylvania • Department of Corrections

Policy Subject:		Policy Number:
Administration of Security Level 5 Housing Units		6.5.1
Date of Issue:	**Authority:**	**Effective Date:**
June 8, 2000	Martin F. Horn	September 1, 2000

I. AUTHORITY

The authority of the Secretary of Corrections to direct the operation of the Department of Corrections is established by Sections 201, 206, and 506 of the Administrative Code of 1929, Act of April 9, 1929, P L 177, 71 P S § 61, 66, and 186 as amended

II. PURPOSE

The purpose of this policy is to establish policy and procedure for the Administration of Security Level 5 Housing Units.

III. APPLICABILITY

This policy is applicable to all facilities within the Department of Corrections that operate a Security Level 5 Housing Units (e.g Restricted Housing Unit [RHU], Special Management Unit [SMU], and Long Term Segregation Unit [LTSU])

IV. DEFINITIONS

A. Administrative Custody (AC)

A housing status to which inmates are assigned for non-disciplinary reasons but requires closer supervision and control than is generally available in general population

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B. Custody Level 5 (CL 5)

A classification level to which inmates are assigned who have demonstrated, through a pattern of escapes or attempted escapes, maladjustive or assaultive behavior, or through a need for protection that they require a high degree of structure.

C. Custody Level 5H (CL 5H)

A custody level assigned to inmates who fail to complete the Special Management Unit program or who may be deemed of having serious behavioral problems and a high potential for repeating that behavior. Inmates with this classification are not viewed as viable candidates for release to general population, due to the following

1. they are a serious escape risk,
2. they have demonstrated assaultive behavior with the intent to cause death or serious bodily injury,
3. they have inflicted injury to staff and/or inmates,
4. they have engaged in a facility disturbance(s),
5. they have been, or are in the possession of, weapons and/or implements of escape,
6. they have a recorded history of:
   a. having or exerting negative influence in facility activities,
   b. being a member of a Security Threat Group or other unauthorized organization(s) as outlined in Department policy **6.3.1, "Facility Security"**; and/or
   c. being a sexual predator.

D. Disciplinary Custody (DC)

A housing status to which inmates are assigned, via sanction imposed by a Hearing Examiner, upon being found guilty of a Class I misconduct.

E. General Population

A housing status to which the majority of inmates are assigned who are not housed within a Restricted Housing Unit, Special Management Unit, Capital Case Unit, Mental Health Unit, Long Term Segregation Unit, Medical Infirmary, or Diagnostic Unit of a particular facility.

F. **Long Term Segregation Unit (LTSU)**

A housing unit or group of cells designated to house inmates classified as Custody Level 5H

G. **Restricted Housing Unit (RHU)**

A housing unit or group of cells designated to house inmates assigned to AC/DC status

H. **Security Level 5, Maximum**

Maximum security housing consisting of single or double occupancy cells with a secure control booth that has remote electronic locking capabilities

I. **Special Management Unit (SMU)**

A housing unit or group of cells designated to house inmates who are, or have been, disruptive or violent.

All other pertinent definitions are contained in the procedure manual for this policy.

POLICY

It is the policy of the Department to maintain Security Level 5 Housing Units in order to maintain the secure and orderly operation of the facility and to provide for the safety of the public, staff, and other inmates. A Security Level 5 Housing Unit is generally a Restricted Housing Unit (RHU), a Special Management Unit (SMU), or a Long Term Segregation Unit (LTSU).

PROCEDURES

1. All L5 receptions will be provided with a copy of the unit's inmate handbook within one (1) hour after reception or as soon thereafter as possible.. The handbook shall be readily available in both English and Spanish. If other language(s) are required, copies will be obtained and issued on an as needed basis.

2. Each inmate is required to sign for a numbered copy of the handbook and it will remain the property of the unit.

3. Each unit handbook shall contain the unit's rules and regulations and information pertaining to the units:

   a. daily and special routines;

   b. rules and regulations;

   c. management phases and progression (SMU and LTSU only);

   d. guidelines for disciplinary time reductions;

e types and frequency of inspections, and

f general and miscellaneous information

4 The handbook shall be reviewed/revised at least annually by the Deputy Superintendent for Facilities Management/Deputy Superintendent for Internal Security and Major-of-the-Guard

5 Inmates shall return the unit handbook when they are released

6 All operational procedures are contained in the procedure manual for this policy

7. All pertinent terms are contained in the glossary of terms section of the procedure manual for this policy

VII. SUSPENSION DURING AN EMERGENCY

In an emergency or extended disruption of normal facility operation, the Secretary, or designee may suspend any provision or section of this policy, for a specific period

VIII. RIGHTS UNDER THIS POLICY

This policy does not create rights in any person nor should it be interpreted or applied in such a manner as to abridge the rights of any individual. This policy should be interpreted to have sufficient flexibility so as to be consistent with law and to permit the accomplishment of the purpose(s) of the policies of the Department of Corrections.

IX. RELEASE OF INFORMATION AND DISSEMINATION OF POLICY

A. Release of Information

1. Policy

This policy document is public information and may be released to members of the public, staff, legislative, judicial, law enforcement and correctional agencies and/or inmates upon request.

2. Procedure Manual (if applicable)

The procedure manual for this policy is not public information and shall not be released in its entirety or in part, without the prior approval of the Secretary of Corrections or designee. This manual or parts thereof, may be released to any Department of Corrections employee on an as needed basis.

B. Distribution of Policy

1. General Distribution

The Department of Corrections' policy and procedure manuals (when applicable) shall be distributed to the members of the Central Office Executive Staff, all Facility Managers, and Community Corrections Regional Directors on a routine basis Distribution to other individuals and/or agencies is subject to the approval of the Secretary of Corrections or designee

2. Distribution to Staff

It is the responsibility of those individuals receiving policies and procedures, as indicated in the "General Distribution" section above, to ensure that each employee expected or required to perform the necessary procedures/duties is issued a copy of the policy and procedures.

SUPERSEDED POLICY AND CROSS REFERENCE

A. Superseded Policy

1. Department Policy

a. 6.5.1, Administration of Restricted Housing Units, issued July 20, 1993, by former Secretary Joseph D Lehman,
b. 6.5.1-1, Administration of Restricted Housing Units, issued August 1, 1995, by Secretary Martin F. Horn,
c. 6.5.1-2, Administration of Restricted Housing Units, issued October 2, 1995, by former Executive Deputy Secretary Raymond E. Clymer, Jr.,
d. 6.5.1-3, Administration of Restricted Housing Units, issued November 27, 1995, by Secretary Martin F. Horn,
e. 6.5.1-4, Administration of Restricted Housing Units, issued April 28, 1997, by Secretary Martin F. Horn,
f. 6.5.1-5, Administration of Restricted Housing Units, issued June 10, 1998, by Secretary Martin F. Horn,
g. 6.5.1-6, Administration of Restricted Housing Units, issued August 27, 1998, by Secretary Martin F. Horn,
h. 6.5.1-7, Administration of Restricted Housing Units, issued January 29, 1999, by Secretary Martin F. Horn,
i. 6.5.1-8, Administration of Restricted Housing Units, issued May 17, 1999, by Secretary Martin F. Horn,
j. 6.5.1-9, Administration of Restricted Housing Units, September 17, 1999, by Secretary Martin F. Horn,
k. 6.5.2, Staff Assignments to the Restricted Housing Units/Selection and Monitoring, issued November 7, 1983, by former Secretary Glen R. Jeffes,
l. 6.5.2-1, Staff Assignments to the Restricted Housing Units/Selection and Monitoring, issued January 12, 1999, by Secretary Martin F. Horn,

m 6 5 4, Use of Video Tapes for RHU/SMU Receptions, issued May 28, 1999, by Secretary Martin F. Horn,
n 6 5 7, Special Management Unit policy issued June 15, 1994 by former Secretary Joseph D. Lehman,
o 6 5.7-1, Special Management Unit bulletin issued February 17, 1998 by Secretary Martin F Horn,
p 6 5 7-2, Special Management Unit bulletin issued August 27, 1998 by Secretary Martin F Horn,
q 6 5 7-3, Special Management Unit bulletin issued February 5, 1999 by Secretary Martin F Horn,
r 6 5 7-4, Special Management Unit bulletin issued February 5, 1999 by Secretary Martin F Horn,
s 6 5 7-5, Special Management Unit May 17, 1999 issued by Secretary Martin F Horn,
t. 6.5.7-6, Special Management Unit September 17, 1999 issued by Secretary Martin F Horn

2. **Facility Policy and Procedures**

This document supersedes all facility policy and procedures on this subject.

B. Cross Reference(s)

1. **Administrative Manuals**

a. DC-ADM 007, Access to Provided Legal Services
b. DC-ADM 201,Use of Force and Restraints
c. DC-ADM 203, Searches of Inmates and Cells
d. DC-ADM 610, Food Services
e. DC-ADM 801, Inmate Discipline
f. DC-ADM 802, Administrative Custody Procedures
g. DC-ADM 803, Inmate Mail and Incoming Publications
h. DC-ADM 804, Consolidated Inmate Grievance Review System
i. DC-ADM 807, Inmate Hygiene and Grooming
j. DC-ADM 815, Commissary Privileges
k. DC-ADM 816, Inmate Compensation System
l. DC-ADM 818, Automated Inmate Telephone System
m DC-ADM 820, for Medical Services Co-Pay
n. 6.3.1, Facility Security
o. 6.3.12, Drug Interdiction
p. 6.6.2, Authorized Defensive Weapons and Equipment
q. 6.7.1, Emergency Preparedness
r. 7.2.1, Counseling Services
s. 7.3.1, Delivery of Mental Health Procedures
t. 11.7.1, Bed Management, Transfer Petition, and Transportation Systems
u. 13.1.4, Refusal to Eat and/or Take Liquids
v. 13.2.3, Access to Health Care
w. 13.4.1, Pharmacy Guidelines

C. ACA Standards

1. Administration of Correctional Agencies: N/A

2. Adult Correctional Institutions: 3-4128, 3-4129, 3-4131, 3-4132, 3-4133, 3-4134, 3-4136, 3-4139, 3-4144, 3-4145, 3-4146, 3-4244, 3-4245, 3-4246, 3-4247, 3-4248, 3-4250, 3-4251, 3-4252, 3-4253, 3-4254, 3-4256, 3-4257, 3-4261, 3-4301, 3-4319, 3-4321, 3-4325

3. Adult Community Residential Services: N/A

4. Adult Correctional Boot Camp Programs: N/A

5. Correctional Training Academies: N/A

PROCEDURES MANUAL
Commonwealth of Pennsylvania • Department of Corrections

Policy Subject:		Policy Number:
Administration of Security Level 5 Housing Units		6.5.1
Date of Issue:	**Authority:**	**Effective Date:**
June 8, 2000	Martin F. Horn	September 1, 2000

Release of Information

Policy Document: The Department of Corrections' policy document on this subject is public information and may be released to members of the public, staff, legislative, judicial, law enforcement and correctional agencies and/or inmates upon request.

Procedure Manual: This Procedure Manual is **not public information** and **shall not be released** in its entirety or in part, without the prior approval of the Secretary of Corrections or designee. This manual or parts thereof, may be released to any Department of Corrections employee on an as needed basis.

Procedure Development: All required procedures shall be developed in compliance with the standards set forth in this manual and/or the governing policy. These standards may be exceeded, but in all cases these standards are the minimum standard that shall be achieved. In the event a deviation or variance is required, a written request shall be submitted to the appropriate Regional Deputy Secretary and the Standards and Practices Unit for review and approval prior to implementation. Absent such approval, all procedures set forth in this manual shall be met.

6.5.1, Adm .istration of Security Level 5 Hou. .g Units
Procedure Manual
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ction 1 - Administration

Purpose

1 Restricted Housing Unit (RHU)

The primary purpose of an RHU is to securely house inmates who while in general population received disciplinary sanctions in accordance with Department policy **DC-ADM 801, "Inmate Discipline"** or who have been placed in Administrative Custody in accordance with **DC-ADM 802, "Administrative Custody Procedures."**

2 Special Management Unit (SMU)

The primary purpose of an SMU is to securely house inmates who exhibit behavior that is continually disruptive, violent, dangerous or a threat to the orderly operation of their assigned facility. Further, these inmates may have been repeatedly subject to disciplinary action or investigation(s). The unit is specifically designed to provide each inmate with the opportunity to demonstrate a stable level of behavior so they can be safely returned to general population or another suitable status.

3 Long Term Segregation Unit (LTSU)

The primary purpose of a LTSU is to securely house the extremely disruptive, violent and problematic inmates. Inmates placed in a LTSU shall have demonstrated an inability or unwillingness to conform to the requirements of general population. In addition, inmates who have continually manifested a negative influence on the safety and security of the PA Department of Corrections, have not suitably progressed in an SMU, or may have reportedly perpetuated criminal activity that threatens the community may be transferred to a LTSU. Each LTSU shall provide extremely high levels of security and sharply reduce the privileges permitted.

B. Physical Plant

1. General

Each Security Level 5 Unit shall be constructed or equipped with:

a maximum security constructed cells, furnished with a toilet, wash basin with hot/cold water, desk, stool, and bunk with a fire retardant, sanitizable mattress;[1]

b fixtures and furniture that are permanently fastened and constructed of high security grade materials;

c lockable cell door apertures;

d. lights and water controlled from outside the cell; and

3-4128, 3-4129, 3-4131, 3-4132, 3-4133, 3-4136

e appropriate devices to prevent inmates from throwing items at staff (i.e , screening, door shields, etc)

2 Recreation Areas

Each Security Level 5 Unit shall have individual exercise yards that meet the following specifications

a. Be constructed with 10' or 12' high 6 gauge chain link fencing,

b have a covered top of 9 gauge chain link fencing,

c have razor ribbon on the roof and yard fences;

d. have gates with lockable apertures through which inmates can be cuffing/uncuffed, and

e have gates that are of a sufficient security grade to contain maximum security inmates.

3. Storage Areas

Each Security Level 5 Unit shall provide adequate storage areas for

a inmate property;

b supplies, and

c. emergency equipment.

4. Shower Facilities

Each Security Level 5 Unit shower shall:

a. be lockable;

b. be equipped with a lockable aperture through which inmates can be cuffing/uncuffed,

c. have water and lights controlled from outside; and

d. have secure plumbing and lighting fixtures

8 Property Control

a The Unit Manager/Officer-in-Charge shall assign a Unit Officer as the Unit's Property Officer. This officer shall be responsible for inventory, control, securing, receiving, and issuing of all inmate property. An alternate may also be named. However, all Unit staff shall ensure that the property control procedures are followed.

b. When an inmate is placed in the L5 Unit, the receiving L5 Unit Officer or the Unit Property Officer shall inventory all personal property. All prohibited property shall be confiscated and marked with the inmate's name, number and housing unit he/she was received from, inventoried and a **DC-153, Personal Property Inventory** completed and the property stored in a designated area. The inmate shall be issued a copy of the **DC-153, Personal Property Inventory**. The **DC-154A, Confiscated Items Receipt** shall be properly completed and a copy issued to the inmate for all those items denied to him/her by the Corrections Officer conducting the inventory.

c. Each inmate shall receive the approved items for his/her status (basic issue, legal materials, etc.) from his/her property; he/she shall not be permitted access to his/her other property except for regulated legal materials or for items approved by PRC.

d While housed in the L5 Unit, inmates shall not be permitted to retain personal property, except as approved by the Unit Management Team or PRC and/or as provided in this manual

e The property shall be stored in the property room located within the unit, logged in the property log, properly labeled, and placed on appropriate shelving

f Upon being released back to general population, staff, in the presence of the inmate, shall remove and check the inmate's remaining property from storage and return it to the inmate. Any discrepancies or breakage shall be documented and forwarded to the appropriate staff The inmate shall sign the DC-153, **Personal Property Inventory** for all property received

g Property may be confiscated through misconduct procedures from any L5 Unit inmate who is abusing the property or fashioning it in such a way that it provides a threat to security or safety The decision shall be made by the Unit Manager/Officer-In-Charge and/or Shift Commander and reviewed by the Unit Management Team and PRC In addition, further disposition shall be made by the Hearing Examiner on the misconduct report

h Inmates housed in the L5 Unit may request a legal pack, (a reasonable amount of paper, carbon paper and a flex pen) for the purpose of preparing legal documents The Unit Manager/Officer-In-Charge shall permit the inmate to order the required items through the commissary If the inmate is indigent, the Unit Manager/Officer-In-Charge shall notify the Corrections Libranan who shall supply the necessary items The L5 Unit Lieutenant/Sergeant shall issue the inmate a security pen Upon issuance of the pen, it shall be logged on the DC-17X, **Adjustment Record For Security Level 5 Inmates**. During routine cell inspections and searches, the officers are to note the condition of the pen

E. Assignment of Inmates

1 RHU

Inmates shall be assigned to the RHU in accordance with Department policy, **DC-ADM 801, "Inmate Discipline" or DC-ADM 802, "Administrative Custody Procedures."**

2. SMU

1. Inmates assigned to an SMU are those who exhibit behavior that is continually disruptive, violent, dangerous or a threat to the orderly operation of their assigned facility. Further, these inmates may have been repeatedly subject to disciplinary action or investigations.

2 The following inmates shall generally be excluded from assignment to an SMU:

(1) protection/self-confinement cases,

(2) inmates with a major psychiatric disorder (Axis I), excluding drug and/or alcohol diagnoses,

(3) inmates whose behavior has been, or is, a risk of escape or a threat to others or the facility as a whole, and that placement in general population or RHU would not currently be appropriate

(4) developmentally disabled inmates; and

(5) physically disabled inmates

3. LTSU

a Any inmate who is, has, or may be planning to engage in the following activities may be appropriate for assignment in the LTSU.

(1) inmates who fail to complete SMU,

(2) serious escape history;

(3) assaultive behavior with the intent to cause death or serious bodily injury;

(4) injury to staff and/or inmates,

(5) engaging in facility disturbance(s);

(6) recorded history of having or exerting negative influence in facility activities,

(7) Security Threat Group (STG) member, or other unauthorized organization(s);

(8) Perpetuated criminal activity that threatens the community;

(9) a history of being a sexual predator; and/or

(10) possessing weapons and/or implements of escape

b. The authority to request an inmate's classification as a CL 5H rests with the Facility Manager of the referring facility

c. The authority to approve or disapprove classification as a CL 5H shall rest with the Executive Deputy Secretary or designee. This shall include the authority to verbally approve a placement under extenuating or emergency circumstances. The submission of an automated transfer request and a completed referral packet shall still be required.

d. Upon final approval of the classification, coordination of the actual placement shall be the responsibility of the Diagnostic Classification Coordinator's office.

1. RHU

   All inmates confined in the RHU shall be handled in accordance with DC-ADM 801, "Inmate Discipline" and DC-ADM 802, Administrative Custody Procedures."

2. SMU

   SMU shall be given the opportunity to progress through specific phases within the SMU based upon their behavior and ability to adjust under reduced levels of supervision. Each phase shall offer progressively more privileges and services. Movement between phases is based upon the inmate meeting certain criteria. Inmates received in Disciplinary Custody shall begin at Phase 5; inmates received in Administrative Custody shall begin at Phase 4. **Attachment A** provides an overview of the privileges associated with each Phase.

a Phase 5

This phase is the starting point for inmates in disciplinary custody Inmates shall stay in this phase until the expiration of their DC time or until the PRC grants them an early release from DC status. In-cell educational programs may be approved by PRC

b Phase 4

This phase is the starting point for all inmates transferred to the SMU in AC status and inmates in Phase 5 who have completed their DC time These inmates shall receive the privileges and services established by Department policy **DC-ADM 802, "Administrative Custody Procedures."** In-cell educational and activities programs may be approved by the PRC

c. Phase 3

Inmates progress to this phase from Phase 4 as set forth in **Section I.2** below. Inmates in this phase remain in AC status, but are eligible for privileges and services in addition to those established in **DC-ADM 802, Administrative Custody Procedures."** In this phase, in-cell programming shall be increased to allow the inmate supervised cell study programs from the Education and Activities Departments

d Phase 2

Inmates in this phase also remain in AC status. This is the first time that inmates are permitted out of their cells without restraints individually or in small groups no greater than four (4) inmates. This shall include group counseling, small group yard activities, educational classes, and block out As inmates progress in this phase, they may be assigned as block workers or janitors The number of staff needed to provide proper control and supervision of the group shall be determined by the Unit Management Team.

e. Phase 1

Phase 1 is a probationary period in general population in the inmate's designated facility This probationary period shall last at least 90 days and may be extended to as long as 180 days by Unit Management Team using the inmate staffing review process All inmates on SMU Phase 1 probation shall retain "Z" and "O" program codes. These program codes may be removed by unit management team staffing only after completion of the probationary period.

3. LTSU

Inmates in the LTSU may be changed from one level to another as follows.

a. Inmates in all levels shall be personally reviewed every 30 days by the LTSU Management Team in order to monitor progress and to evaluate any potential for advancement to the next. The Unit Management Team shall develop a new **DC-43, Prescriptive Program Plan** at that time level.

b. The following factors shall be considered prior to advancement to the next level:

(1) time in level,

(2) continued facility risk,

(3) number, type, and frequency of misconducts,

(4) involvement in self-improvement activities,

(5) unit behavior and housing reports, to include:

(b) quarters sanitation;

(c) personal hygiene and grooming,

(d) response to verbal and written orders,

(e) response to authority,

(f) interaction with other inmates,

(g) completion of specific goals as set by Unit Management Team,

(h) work performance, and

(i) demeanor with staff on the block and at periodic reviews

b. RHU

All mail for inmates in the RHU shall be in accordance with Department policy **DC-ADM 803, "Inmate Mail and Incoming Publications."**

c SMU

(1) Receipt of mail shall be based on each inmate's phase, and is considered to be a privilege

(a) Phase 5 - legal, personal, ten (10) photographs, and one (1) newspaper (each newspaper shall be issued as a one (1) for one (1) exchange)

(b) Phase 4 - legal, personal, ten (10) photographs, one (1) magazine, and one (1) newspaper (each newspaper shall be issued as a one (1) for one (1) exchange)

(c) Phase 3 - legal, personal, ten (10) photographs, ten (10) magazines, and one (1) newspaper (each newspaper shall be issued as a one (1) for one (1) exchange)

(d) Phase 2 – same as Phase 3

(e) Phase 1- same mail privileges as general population

(2) The Unit Management Team may authorize additional mail privileges, as part of the inmate's DC-43, "Prescriptive Program Plan," as reinforcement for the inmate's completion of specific goals within specified timeframes

d LTSU

(1) Receipt of mail shall be based on each inmate's phase, and is considered to be a privilege

(a) Level 2 – Legal/personal correspondence

(b) Level 1 Legal/personal correspondence, one (1) newspaper and five (5) magazines. Each newspaper shall be issued as a one (1) for one (1) exchange

. Special Services

1 Telephone Privileges

a RHU

Inmates shall be permitted telephone calls in accordance with Department policy DC-ADM 801, "Inmate Discipline" and DC-ADM 802, "Administrative Custody Procedures."

b SMU

(1) While confined in the SMU, inmates are permitted emergency telephone calls only until progressing to Phase 3

(2) Inmates in Phase 3 may be permitted one (1) telephone call per month Inmates in Phase 2 may be permitted one (1) telephone call every two (2) weeks (or two [2] in a month)

(3) The Unit Management Team may authorize additional telephone privileges, as part of the inmate's Prescriptive Program Plan, as reinforcement for the inmate's completion of specific goals within specified timeframes

(4) The Unit Manager shall deal with emergency telephone calls on a case-by-case basis All situations that may warrant an emergency call shall be verified.

(5) In the event of a request for an emergency telephone call when the Unit Manager is not available, an emergency call for a serious illness or death of a family member may be authorized by the Facility Manager, Deputy Superintendents, PRC, Major, or the Shift Commander.

(6) All telephone calls shall be limited to fifteen (15) minutes in duration and shall be made collect from the inmate telephone in the unit pursuant to Department policy DC-ADM 818, "Automated Inmate Telephone System."

2. Basic Issue, Hygiene Items, and Commissary

a Inmates confined in a L5 Unit shall be issued the following items:

1 jumpsuit	1 copy of the unit handbook
1 blanket	1 flex-toothbrush
3 pairs of socks	1 toothpaste
3 undershorts (males)	1 washcloth
3 panties (females)	1 toilet paper

3 undershirts (males and females)	writing paper**
3 bras (females)	carbon paper**
2 sheets	up to 10 postage paid envelopes
1 pillowcase	1 request slip**
1 pair slip on canvas shoes	1 flex-pen**
1 bar of soap	1 comb**
1 grievance form**	

b Special items falling in the category of personal hygiene such as denture items, prescription eyeglasses, combs, feminine hygiene products, etc shall generally be permitted unless a security concern is evident Any such request shall be addressed to the Unit Manager/Officer-In-Charge for review.

c Accumulation of the article listed above may be restricted when it affects security, health, sanitation, or safety No articles or items are permitted that are composed entirely or in part of glass or metal, this includes lids as well as containers. Items that are not on the above list shall be approved by the Unit Manager before they shall be permitted in the inmate's possession

3 Commissary

a. General

(1) When permitted, all commissary purchases shall be consistent with **DC-ADM 801, "Inmate Discipline," DC-ADM 802, "Administrative Custody Procedure, and DC-ADM 815, "Commissary Privileges."**

(2) Each facility shall develop a separate commissary list (order form) for inmates in L 5 status

(3) DC status inmate purchases shall be limited to approved commissary items for personal hygiene (excluding razors), underwear, items needed for personal/legal correspondence (excluding pens/pencils). All tobacco products are prohibited.

(4) AC status inmate purchases shall be limited to items that have not been identified as safety/security items by the Deputy Superintendent for Facilities Management/Deputy Superintendent for Internal Security.

(5) If possible and practical, the facility shall provide an alternate item, or an appropriate procedure as a substitute for restricted items. For example, a "flex-pen" may be issued instead of a pen/pencil.

(6) Officers shall not pass commissary items from one inmate to another.

(7) Inmates are not permitted to retain any of the paper/plastic bags used to transport commissary

b RHU

Commissary privileges for RHU inmates shall be in compliance with the general procedures listed above.

c SMU

Commissary privileges for the SMU inmates shall be in compliance with the general procedures listed above and

(1) Phase 2 inmates are permitted to purchase a radio and/or television. Phase 3 inmates are permitted to purchase a radio only, upon approval of the Unit Manager. Earphones are required for both televisions and radios

(2) The following additional articles are permitted for Phases 2 and 3:

greeting cards	newspaper (not over one week old)
legal envelopes	magazines (no more then 10),
loose leaf paper	hard or soft back dictionary
notebook (composition type, no metal)	wedding band
Writing tablet	legal and religious materials that fit in
edible commissary	one (1) records center box

(3) Phase 2 inmates are permitted to purchase up to $20.00 of commissary items per week. Phase 3 inmates are permitted to purchase up to $10.00 of commissary items per week. Neither Phase 2 or Phase 3 inmates may purchase articles of clothing. Commissary privileges may be revoked by the Unit Management Team or PRC if abused by the inmate

(4) The Unit Management Team may authorize additional personal property/commissary privileges, as part of the inmate's **DC-43, Prescriptive Program Plan** as reinforcement for the inmate's completion of specific goals within specified timeframes.

d LTSU

Commissary privileges for the LTSU inmates shall be in compliance with the general procedures listed in **Section a** above and shall be limited to five dollars ($5.00) per week.

4 Barber/Cosmetology Services

a All inmates are required to maintain grooming standards in accordance with Department policy **DC-ADM 807, "Inmate Hygiene and Grooming."**

b. All inmates shall be eligible for a haircut once each 30 days or as provided for inmates in general population. A haircut may be provided prior to the first 30 days being served if necessary, to ensure that the inmate is in compliance with the **DC-ADM 807,**

(3) Use of the mini law library may be denied if there is an immediate security concern

(4) The Unit Manager/Officer-In-Charge or designee shall maintain a log to record inmate use of the library, including name, number, date, and length of time the library was used

(5) The facility librarian shall inventory and update the unit's mini law library on a weekly basis

(6) An inmate shall only be permitted to assist or be assisted by other inmates as approved by the Unit Manager/Officer-In-Charge or designee

(7) the inmate and all reference materials shall be searched before going to and upon leaving the library.

8 Visits

a Frequency

(1) RHU

The frequency of visits for each RHU inmate shall be determined by his/her custody status

(a) DC status inmates shall be permitted one (1) visit per month with immediate family.

(b) AC status inmates shall be permitted one (1) visit per week with immediate family.

(c) RHU visits shall be permitted Monday through Friday No weekend, holiday, or extended visiting hours are permitted

(d) All visits are restricted to a maximum of one (1) hour.

(2) SMU

The frequency of visits for each SMU inmate shall be determined by his/her management Phase.

(a) SMU Phase 5 - non-contact, one (1) per month, immediate family only.

(b) SMU Phase 4 - non-contact, one (1) per week, and a maximum of 2 weekend or holiday visits per month

(c) SMU Phase 3 - non-contact, one (1) per week, and a maximum of 2 weekend or holiday visits per month.

(d) SMU Phase 2 - non-contact, one (1) per week, and a maximum of 3 weekend or holiday visits per month

(e) SMU Phase 1 - non-contact, same number of visits as general population.

(f) The Unit Management Team may authorize additional visiting privileges, as part of the inmate's DC-43, **Prescriptive Program Plan** as reinforcement for the inmate's completion of specific goals within specified timeframes.

(g) All visits shall be a minimum of one (1) hour.

(3) LTSU

The frequency of visits for each LTSU inmate shall be determined by his/her management Level.

(a) LTSU Level 2 - One (1) non-contact weekday visit (of at least one (1) hour) is permitted per month with immediate family only. No holiday visits are permitted.

(b) Level 1 - Two (2) non-contact weekday visits (of at least one (1) hour) per month with any approved visitor is approved.

(c) The Unit Management Team may authorize additional visiting privileges, as part of the inmate's DC-43, **Prescriptive Program Plan** as reinforcement for the inmate's completion of specific goals within specified timeframes.

General Procedures

(1) All L 5 visits shall be non-contact and under direct/constant visual observation of a Corrections Officer.

(2) All L 5 visits shall be conducted in the unit, if a visiting area is available, or in another location with securable a non-contact area(s).

(3) The number of visitors permitted at any given time is limited to 2. This may be two (2) adults or one (1) adult and one (1) child under the age of eighteen (18.) The Unit Manager and/or Shift Commander has the discretion to permit additional visitors such as small children and/or infants on a case-by-case basis.

(4) All L 5 inmates, regardless of Custody status, Phase or Level, may receive non-contact visits from legal counsel. Legal visits shall not be limited in number or frequency absent security concerns, and then only upon the Facility Manager's approval following consultation with the Department's Office of Chief Counsel.

(5) The inmate shall be escorted to and from visits by unit Officers or Corrections Officers assigned by the Shift Commander/designee.

(6) Failure to comply with all rules and regulations during visits by the inmate or his/her visitor(s) shall result in the termination of the visit

(7) Personal items, such as handbags are not permitted, nor is smoking permitted by the inmate or the visitor in the visiting area No food items are permitted

(8) Appropriate restraints shall remain on the inmate while the inmate is in the visiting area

(9) The visit shall be kept under constant observation by the assigned Officer.

(10) All visitors are required to present identification and are subject to the use of hand held metal detectors, electronic drug detection devices, etc in accordance with Department policy **DC-ADM 812 "Inmate Visiting Privileges."**

(11) Visitors who fail to act in compliance with visiting privilege guidelines shall have the visit terminated.

(12) Visits shall be limited on a first come, first served basis.

(13) When notified of a visit, the unit Officer shall inform the inmate, allow him/her time to prepare for the visit. The Escorting Officer shall ensure that the inmate is properly dressed and restrained.

(14) Once in the visiting area, the inmate shall be transferred to the custody of the Visiting Officer(s) until the visit is concluded Once the visit is concluded, the Visiting Officer shall notify the Unit Control Booth and the inmate shall be returned to the cell.

9. Religious Privileges

a The facility's Chaplains are responsible for tending to each inmate's religious needs, provided that such services do not infringe upon the security precautions of the unit. The Chaplaincy Department may provide religious items to the inmates with the approval of the Unit Manager/Officer-In-Charge and in accordance with Department policy **DC-ADM 819, "Religious Activities."**

b Inmates confined in a L5 Unit are not permitted to attend religious services in the Chapel. Inmates in a L5 Unit shall be visited by a Facility Chaplain on a daily basis, when available, and weekly by a Chaplain of the inmate's faith, if available. All Chaplains entering/exiting the unit shall sign in/out in the **DC-702, Security Level 5 Housing Unit Visitors Log.** Entries shall also be made by unit staff in the log book and daily report documenting the visit.

c. Each inmate shall be permitted to retain religious materials, that along with any legal materials, shall fit in the one (1) records center box. Approved religious materials are any written documents that are reasonably related to religion. Any questions

	RHU	SMU	LTSU
Activities	In Cell	Phase 5, 4 and 3-In Cell Phase 2 in Small Groups	← Same as RHU →
Commissary	DC Status – Toilet Articles AC-Status- In accordance with AC Commissary List **No Tobacco products permitted.**	Phases 5 and 4-Writing Materials Only Phase 3 -$10 per week (no clothing) Phase 2 -$20 per week (no clothing) **No Tobacco products permitted.**	Level 2 - None Level 1-$5 per week **No Tobacco products permitted**
Compensation	As per DC-ADM 816, Inmate Compensation System	← Same as RHU	← Same as RHU
Counseling Services	In Cell Visits by Counselor	Phases 5, 4 and 3-In Cell Visits by Counselor Phase 2 / Small Group in Unit	← Same as RHU
Educational Services	Both Status-In cell as approved by PRC	All Phases –In cell as approved by Unit Team Phase 2-Small Group in Unit	Level 2-In cell study (GED and Special Ed, if approved) Level 1-None
Employment	DC Status-Unit Janitor (if no AC available) AC Status-Unit Janitor	Phases 5 and 4 -None Phase 3-Unit Janitor (if no phase 2 available) Phase 2-Unit Janitor	Level 2-Unit Janitor (if no Level 1 available) Level 1-Unit Janitor
Exercise	1 Hour – 5 Days a Week	← Same as RHU	← Same as RHU
Laundry	Twice per week	← Same as RHU	← Same as RHU
Legal-Religious Materials	Contents of 1 Records Center Box	← Same as RHU	← Same as RHU
Library Services	Recreational books from library. Mini law library on unit.	← Same as RHU	← Same as RHU
Mail-Incoming Publications	Legal/Personal Correspondence as per DC-ADM 803, Inmate Mail and Incoming Publications	Phase 5- 1 Newspaper, 10 Photos Phase 4- 1 Newspaper, 10 Photos, 1 Magazine Phase 3- 1 Newspaper, 10 Photos, 10 Magazines Phase 2- Same as Phase 3	Level 2- Legal/Personal Correspondence Level 1- Legal/Personal Correspondence, 1 Newspaper, 5 Magazines
Medical-Dental	In Unit Screening	← Same as RHU	← Same as RHU
Mental Health	In Unit Screening	← Same as RHU	← Same as RHU
Property	AC/DC Status -Toilet Articles, Shower Shoes, Eyeglasses, Dentures	All Phases - Shower Shoes, Dictionary, Eyeglasses, Dentures	Both Levels-Shower Shoes, Dictionary, Eyeglasses, Dentures
Radio-Television	DC Status – None AC Status- As approved by PRC	Phases 5 and 4-None Phase 3-Radio only Phase 2-Radio and Television	Level 2-None Level 1-None
Religious Activities	In Cell Visits by Chaplain	← Same as RHU	← Same as RHU
Showers	Three (3) per week	← Same as RHU	← Same as RHU
Telephone Calls	DC Status As per DC-ADM 801, Inmate Discipline AC Status As per DC-ADM 802, Administrative Custody Procedures	Phase 5-and 4-Emergency Only Phase 3-One per month Phase 2-One every 2 weeks	Level 2- Emergency Only Level 1-1 per month
Visits All Non-Contact	DC Status-1/month immediate family AC Status-1/week	Phase 5-1/month immediate family Phases 4 & 3- 1/week and 2 weekend/holiday a month Phase 2-1/week and 3 weekend/holiday a month	Level 2-1 per month immediate family Level 1-2 per month immediate family

POLICY STATEMENT
Commonwealth of Pennsylvania• Department of Corrections

Policy Subject: Capital Case Administration		Policy Number: 6.5.8
Date of Issue: July 30, 1997	Authority:	Effective Date: July 30, 1997

I. AUTHORITY

The Authority of the Commissioner of Corrections to direct the operations of the Department of Corrections is established by Sections 201, 206, 506, and 901-B of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, No. 175, as amended.

II. PURPOSE

The purpose of this directive is to set forth policy and procedures for:

A. Standardizing the administration of Capital Case status inmates;
B. Delivering of an appropriate array of program opportunities for Phase I Capital Case inmates;
C. Providing for access to legal materials by Capital Case inmates;
D. Standardizing the duties and responsibilities for those staff assigned to the care and custody of Capital Case status inmates;
E. Designating the number and qualifications of personnel who will carry out executions;
F. Handling news media coverage of executions; and
G. Providing the opportunity for the interaction between registered victim and the Office of the Victim Advocate

III. APPLICABILITY

This policy is applicable to all persons employed by the Department of Corrections and to those individuals and groups who have business or use the resources of the Department.

DEFINITIONS:

The definitions of terms pertaining to this policy are included in the Capital Case Manual.

POLICY

It is the policy of the Department of Corrections to:

A. Administer all Capital Cases in a secure and humane manner consistent with applicable law;
B. Ensure that all Phase I Capital Case inmates are governed by the same general policies applicable to all Administrative Custody inmates with the few exceptions described in specific policies;
C. Ensure that all Phase I Capital Case inmates in Administrative Custody status have access to educational and leisure programs;
D. Make appropriate provisions allowing Capital Case inmates in Phase I and/or Phase II access to legal materials;
E. Provide a safe, secure and humane process of administering a Capital Punishment sentence as required by applicable laws and statutes of the Commonwealth of Pennsylvania;
F. Make reasonable accommodations for and respond appropriately to the needs of the representatives of the various news media in their coverage immediately before, during and after an execution, while preserving the good order and security of the institution; and
G. Provide for appropriate accommodations for preparing registered victims who have chosen to serve as a witness of an execution.
H. Ensure the appropraite dissemination of records and information relating to capital case inmates.

PROCEDURES

All pertinent procedures regarding this policy are included in the Capital Case Manual.

The policies developed under the authority of this document are public information. The attached manual is confidential, is <u>not</u> public information and is not subject to any disclosure requirements otherwise governing the contents of the Department's Administrative Manuals.

VII. SUSPENSION DURING EMERGENCY

In an emergency situation or extended disruption of normal institutional operations, any provision or section of this policy may be suspended by the Commissioner or his/her designee.

RIGHTS UNDER THE POLICY

This policy does not create rights in any person nor should it be interpreted or applied in such a manner as to abridge the rights of any individual. This policy should be interpreted to have sufficient flexibility so as to be consistent with law and to permit the accomplishment of the purposes of the policies of the Department of Corrections.

SUPERSEDED POLICY AND CROSS REFERENCE

A. This policy supersedes the following policies:

Volume I, 1.4.2, News Media Coverage of Executions, issued on 9-28-92, by former Commissioner Joseph D. Lehman
Volume VI, 6.3.9, Solitary Confinement Officer, issued on 9-28-92, by former Commissioner Joseph D. Lehman.
Volume VI, 6.3.9 -1, Solitary Confinement Officer, issued on 9-5-95, by Commissioner Martin F. Horn.
Volume VI, 6.5.4, Legal Materials, Access for Capital Cases, issued on 9-28-92, by former Commissioner Joseph D. Lehman.
Volume VI, 6.5.8, Capital Cases, issued on 9-28-92, by former Commissioner Joseph D. Lehman.
Volume VI, 6.5.8 -T, Capital Cases, issued on 1-10-96, by former Executive Deputy Commissioner Raymond E. Clymer, Jr.
Volume VI, 6.5.8 -2, Capital Cases, issued on 9-5-95, by Commissioner Martin F. Horn.
Volume VI, 6.5.8 -3, Capital Cases, issued on 9-13-96, by former Executive Deputy Commissioner Raymond E. Clymer, Jr.
Volume VI, 6.5.9, Programs for Phase I Capital Cases, issued on 9-28-92, by former Commissioner Joseph D. Lehman.
Volume VI, 6.5.10, Capital Cases Management Plan Policy (pilot Project), 9-28-92, by former Commissioner Joseph D. Lehman.
Volume VI, 6.5.12, Phase III Capital Case Administration, issued on 5-1-95, by Commissioner Martin F. Horn.
Volume VI, 6.5.12 -1, Phase III Capital Case Administration, issued on 9-5-95, by Commissioner Martin F. Horn.
Volume VI, 6.5.12 -2, Phase III Capital Case Administration, issued on 9-13-96, by former Executive Deputy Commissioner Raymond E. Clymer, Jr.
Volume XVI, 16.2.5, Injection Team, issued on 3-28-91, by former Commissioner Joseph D. Lehman.

B. Administrative Manuals Cross Reference(s):
DC-ADM 009, News Media Relations
DC-ADM 801, Inmate Disciplinary and Restricted Housing Procedures
DC-ADM 802, Administrative Custody Procedures
DC-ADM 806, Inmate Deaths
DC-ADM 812, Visiting Privileges
DC-ADM 815, Commissary Privileges
DC-ADM 816, Inmate Compensation System
DC-ADM 818, Inmate Telephone Calls
1.4.1, 1.4.1-1, 1.4.1-2 News Media Relations

C. ACA Cross Reference(s): None



CAPITAL CASE
MANUAL
6.5.8

CONFIDENTIAL

Last Revised on: July 24, 1997

Distribution Restricted to:

Commissioner of Corrections
Executive Deputy Commissioner
Regional Deputy Commissioners (3)
Superintendent, Capital Institution
Deputy Superintendents, Capital Institution (2)
Superintendent, Home Institution
Deputy Superintendents, Home Institution (2)
Director, Office of Professional Responsibility
Chief of Security
Chief Counsel
General Counsel
Press Secretary

Approved by:

Commissioner

Date 7/24/97

Definitions:

A. **Administrative Custody** - A status of confinement for non-disciplinary reasons which provides closer supervision, control, and protection than is provided for in general population.

B. **Attorney of Record** - The person appointed by the court or designated by the inmate as legal counsel to the inmate at the time of the scheduled execution.

C. **Capital Case** - An inmate (1) physically committed to the Department of Corrections under a sentence of Capital Punishment; (2) pending sentencing under a jury recommendation for Capital Punishment; or (3) whose sentence of Capital Punishment has been vacated, but is awaiting re-sentencing where a sentence of Capital Punishment may be reimposed.

D. Visiting

1. All visits for inmates in Phase I shall be non-contact unless otherwise directed by court order or approved by the Commissioner of Corrections or designee.

2. Each inmate will be allowed one (1) visit per week.

3. The duration of a visit shall be a minimum of one (1) hour and a maximum of two (2) hours.

4. Legal and Spiritual Advisor visits are not counted, however they are to be non-contact.

5. Special requests for a contact visit by an Attorney for testing, etc., must be forwarded to the Office of Chief Counsel for review. The respective Regional Deputy Commissioner shall approve/disapprove all contact visit requests.

6. Attorney/Client confidentiality privileges are to be maintained and each inmate must be afforded the opportunity to have confidential conversations with the Attorney of record.

7. Additional and/or extended visits may be approved by the Superintendent or designee as per the DC-ADM 812, Visiting Privileges policy.

E. Telephone Calls

1. Each inmate is to be afforded the opportunity to place one (1) collect, fifteen (15) minute telephone call per week.

2. In addition, collect telephone calls to the Attorney of record will be permitted upon request by the Attorney, but restrictions may be imposed if abuse of the privilege occurs.

3. Telephone calls to an Attorney will be handled in accordance with the DC-ADM 818, Inmate Telephone Calls policy.

F. Television and Radio

Personal television and radio may be permitted in accordance with the DC-ADM 802 Administrative Custody Procedures policy.

G. Exercise

1. Phase I Capital Case inmates shall be permitted one (1) hour of outdoor exercise five (5) days per week, weather permitting.

2. Up to two (2) inmates may be permitted to exercise together in an outside exercise area, taking into account separation and security concerns, for one (1) hour per day, five (5) days per week.

3. A handball and/or basketball is permitted.

Cell Property

1. One (1) record center size box is permitted.

2. An arm chair or desk type piece of furniture is also permitted provided it is of a material that does not pose a security threat.

3. Inmates of the Muslim faith are permitted One (1) prayer rug, however it must be rolled up when not in use.

4. Commissary items, such as lotions, creams, etc., are permitted, but the items may not be retained by the inmate.

Available Programs

Educational and leisure programs shall be made available to interested Phase I Capital Case inmates housed in Administrative Custody.

1. **Educational Programs**

   a. Educational programs shall range from basic literacy through high school.

   b. The programs will be at no cost to the inmate.

   c. Post-secondary opportunities may be made available at the inmate's expense.

   d. Other educational programs available are:

      (1) Adult Basic Education (ABE)
      (2) General Equivalency Diploma (GED)
      (3) Individual/Self Study Program

   e. In-Cell Work Programs may be considered. If developed and approved, appropriate pay in accordance with the DC-ADM 816, Inmate Compensation System policy, should be afforded.

2. **Education Director**

The Education Director will assure that:

a. All Phase I Capital Case inmates are made aware of educational opportunities available, and are advised of the procedures for requesting participation.

b. The standard materials are available and are provided as needed. (S)he will also assure that appropriate tutoring is provided as needed by the particular program.

c. Only materials deemed appropriate for each level are used.

3. **Leisure Activities**

The Activities Manager will assure:

a. That Phase I Capital Case inmates are aware of recreational opportunities and are advised of procedures for requesting participation.

b. Only selected and approved arts and crafts materials, authorized by the Superintendent are used.

4. **Religious Activities**

As permitted in accordance with the DC-ADM 802 Administrative Custody Procedures policy.

5. **Reading Materials**

a. Library materials may be made available through established procedures.

b. Inmates will be allowed to retain legal, religious, educational, recreational reading materials (books and magazines) and other legal documents that can be stored in the one (1) record size box permitted.

c. Newspapers will be permitted on a one (1) for one (1) exchange basis.

J. **Inmate Transfers**

If a Phase I Capital Case inmate participating in a program is transferred, progress records and the materials being used will be transferred with the inmate to assure continuity of participation at the next institution.

K. **Placement in Disciplinary Custody Status**

A Phase I Capital Case inmate transferred to Disciplinary Custody Status will be suspended from program participation until returned to Administrative Custody in accordance with the DC-ADM 802 Administrative Custody Procedures policy.

L. **Capital Case Inmate Transfer to Mental Health Unit or SCI - Waymart Forensic Unit**

The procedures contained in this manual are applicable to all capital case inmates transferred to a mental health unit or to the SCI - Waymary Forensic Unit. Any variation from these policies for the purpose of engaging the inmate in more treatment programs or variance for any other reasons must be requested in writing to the Department's Chief of Psychiatry in the Bureau of Health Care Services. The Chief of Psychiatry in consultation with the appropriate Regional Deputy Commissioner and the Commissioner shall make a decision as to whether to deviate from policy.

POLICY STATEMENT
Commonwealth of Pennsylvania • Department of Corrections

Policy Subject:		Policy Number:
Inmate Mail and Incoming Publications		DC-ADM 803
Date of Issue:	**Authority:**	**Effective Date:**
January 22, 2001	Martin F. Horn	February 19, 2001

I. AUTHORITY

The Authority of the Secretary of Corrections to direct the operation of the Department of Corrections is established by Sections 201, 206, 506, and 901-B of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, No. 175, as amended.

II. PURPOSE

It is the purpose of the Department of Corrections to establish policy and procedures that govern inmate mail privileges and incoming publications.[1]

III. APPLICABILITY

This policy applies to all inmates and employees, volunteers, and contract vendors who reside or work in facilities under the jurisdiction of the Department with the exception of the Bureau of Community Corrections.

IV. DEFINITIONS

A. Approved Inmate Name

The committed name and/or a name change that is in accordance with Department policy, **11.5.1, "Records Office Operations."**

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[1] 1-ABC-5D-01, 1-ABC-5D-04; 2-CO-5D-01

F. Incoming Publications

1. General Procedures

a. All publications must be received from the original source. Covers of hardbound publications may be damaged through examination or removed where inspection of the cover is deemed necessary and no reasonably available alternative form of inspection is adequate.

b. Magazines must be mailed directly from the original source. Small letter sized pamphlets may be received in regular correspondence from family members, friends or religious advisors.

c. Newspapers may be mailed or delivered to the facility.

d. Publications that are sent directly from a publisher, bookstore, book club, distributor or department store will usually be deemed to have come from the original source.

e. Newsletters and other mail from recognized non-profit religious and charitable organizations, when addressed to an individual inmate shall be delivered to the inmate even if mailed at less than first or second-class mail rates (i.e., bulk mail rate).

f. If a publication contains questionable content, mailroom personnel, education staff, or the librarian will be responsible for forwarding these publications to the Incoming Publication Review Committee (IPRC).

g. An inmate may receive more than one copy of any publication only with special approval of the IPRC.

h. Upon transfer, publications approved at one facility will not necessarily be permitted in another facility. The IPRC at the receiving facility will review any publications that are deemed questionable.

i. Upon receipt of mail sent at less than First or Second Class Rate, the mail inspector will verify that the stamp specifically states "Bulk Rate" and if the words "Bulk Rate" are not printed on the mail, it will be processed as incoming mail.

j. However, if the words "Bulk Rate" are marked on the item, the mail inspector will determine if the item meets the criteria for a publication as outlined in section, IV-P. If the criteria for a publication are met, it will be accepted and processed in accordance with section, IV-F <u>regardless of the postal rate at which it was mailed.</u> Although, if the item has a Bulk Rate Stamp, but does not meet the criteria for a publication, delivery will be refused in accordance with section, VI (E)(9).

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RONALD BANKS,
Plaintiff,
vs
JEFFREY BEARD,
Defendant

The deposition of JOEL DICKSON was taken pursuant to the Federal Rules of Civil Procedure, before Sarah A. Hornak, Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania at the State Correctional Institution at Pittsburgh, 3001 Beaver Avenue, Pittsburgh, Pennsylvania 15233, on the 2nd day of August 2002, beginning at 10:15 a.m.

COPY

Sarah A. Hornak
Court Reporter
153 Mary Meringolo Street
Mcdonald, Pennsylvania 15320
(412) 667-0479

I N D E X

WITNESS EXAMINATION BY PAGE
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E X H I B I T S

NUMBER MARKED FOR IDENTIFICATION
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6 - Letter requesting "CRATTERstamps" 77
7 - Policy Directive 79
8 - Procedures Manual 96
9 - 1998 Northern Circuit: 2000 98
10 - Policy Statement 99
11 - Policy Statement 85
12 - Annual Renewal List 35
13 - SCI Library Book Request Slip 83
14 - 1999 Handbook January 2001 81
22 - Weekly Book Delivery Schedule for A-J, August 2002 100
23 - Annual Renewal List 100

A P P E A R A N C E S

On behalf of the Plaintiff:

JESS KRAKOFF, Esquire
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Pittsburgh, Pennsylvania 15219

On behalf of the Defendant:

MICHAEL ALEXANDER HERTZEL, Esquire
Deputy Attorney General
Litigation Section
Manor Complex, 4th Floor
Pittsburgh, Pennsylvania 15219

P R O C E E D I N G S

JOEL DICKSON,
a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. KRAKOFF
Q What is your name?
A Joel Scott Dickson.
Q Are you a deputy superintendent at the State Correctional Institution at Pittsburgh?
A I am.
Q What is your title?
A I'm the deputy superintendent for centralized services
Q What does that job entail?
A Generally, I have oversight of the treatment side of the institution; the hospital care, dietary, treatment services to include— drug and alcohol, the psychology department. Correctional industries falls under my purview. That pretty much covers the big ones.
Q You supervise those areas?
A I do.
Q Did you hold any other positions at

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SCI Pittsburgh prior to that?
A. Yes, I did. I previously was the deputy superintendent for internal security.
Q. When did you hold that position?
A. From my hiring here in July of 1998 through March of this year.
Q. March of 2002?
A. Correct.
Q. Was it in March that you assumed the other centralized services position?
A. Yes.
Q. Will you summarize what your responsibilities were when you were deputy superintendent for internal security?
A. Primarily, I supervised all the functions of the security office, which would include all internal investigations in the institution.
Also, I was responsible for control and access control to the institution and out of the institution trying to ensure that contraband did not enter the institution through the visiting room, the mailroom, things like that.
I also had oversight of the RHU, the Restricted Housing Unit, which includes the

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LTSU, the Long Term Segregation Unit.
Q. What were your responsibilities in conjunction with the Long Term Segregation Unit?
A. I had, again, direct supervision. I worked directly for the superintendent. I played a significant role in the development of the Long Term Segregation Unit here at Pittsburgh and directly supervised the staff in the LTSU.
Q. Did you play any role in the development of policies as they related to the access of Long Term Segregation Unit inmates to newspapers or other reading materials?
A. Primarily, we would enforce those policies and procedures that were formulated at our central office.
Q. And that is the same, I suppose, with respect to access of inmates in the Long Term Segregation Unit to photographs?
A. Yes.
Q. Do you know who within the central office developed the Long Term Segregation Unit policies?
A. Policies and procedures come out of the office of standards and practices. Who

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specifically played a role, generally these are done through a committee process. Who participated in that, I couldn't say.
Q. Are there permanent members who would sit on the committee process, or would that vary?
A. I honestly don't know.
Q. But you're, I suppose, intimately familiar with the policies that apply in the Long Term Segregation Unit to access to reading materials as well as access to photographs?
A. I can generally speak to those issues. Yes.
Q. In your current capacity of centralized services, I take it that you don't have any responsibilities in conjunction with maintaining security in the LTSU, is that right --
A. That's correct.
Q. But the other --
A. That's correct.
Q. I'll complete my sentence, because I didn't. The other superintendent has responsibility over that area?
A. To clarify, the position of the

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deputy for internal security has been abolished, and the LTSU now falls -- the chain of command would fall directly under the major for unit management and then the deputy superintendent for facilities management.
Q. Who is that person?
A. The major is Major Frank Cole, and the deputy superintendent for facilities management is Deputy Mark Krysevig.
Q. Maybe you can spell that.
A. K-r-y-s-e-v-i-g.
Q. This is somewhat redundant. Let me represent to you that before scheduling this deposition, I asked the Department of Corrections through Mr. Mericli, meaning that I conveyed the message through Mr. Merich, for the Department to designate an official of the Department who would be able to testify authoritatively and comprehensively on behalf of the Department with respect to its policy governing the possession of newspapers, magazines, and other published reading materials in the Long Term Segregation Unit and also possession of photographs by inmates in that unit.

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My understanding is that you were designated to speak on behalf of the Department. Is my understanding correct?
A. That's my understanding as well. Yes.
MR. MERICLI: That's my understanding as well.
BY MR. KRAKOFF:
Q. More specifically, you feel comfortable that you can speak authoritatively and comprehensively with respect to what purpose or purposes – penological, institutional – are said to be related to the policies governing access by LTSU inmates to reading materials and photographs?
A. Yes, I can.
Q. How many prisons in the Pennsylvania prison system have Long Term Segregation Units?
A. One.
Q. That one LTSU is located in Pittsburgh; is that right?
A. That's correct.
Q. In what year did the unit, the LTSU, actually begin operation at SCI Pittsburgh?
A. The first inmate came to the LTSU in April of 2000.
Q. Then from there, I suppose, other inmates came, and eventually it was populated by a fair number of inmates?
A. Yes.
Q. Had there been an LTSU in operation anywhere else before that first inmate came to Pittsburgh's LTSU?
A. In the Pennsylvania Department of Corrections?
Q. In the Pennsylvania –
A. No.
Q. Where within the SCI Pittsburgh complex is the Long Term Segregation Unit located?
A. The area is labeled as A-100, which is Building or Block A, third floor.
Q. I gathered from you earlier testimony that the Long Term Segregation Unit is considered a form of Restricted Housing Unit confinement; is that right?
A. Yes.
Q. Are there any other categories of housing units that are located on the third floor of that building?
A. No.
Q. How many pods does the Long Term Segregation Unit occupy?
A. There are six pods.
Q. How are they numbered or lettered or otherwise identified?
A. Well, there are eight – there are two sides, the A side and the B side, which have three pods each, and there are eight cells in each of the pods.
Q. Are the pods numbered or lettered? This isn't a test I'm giving. I'm just trying to get a fix on that.
A. We recently had a renumbering system. The cells are numbered by side, labeled A, B, and then –
Q. There's a B side?
A. There's an A side and a B side.
Q. So there would be three pods on A side and three pods on B side?
A. That's correct.
Q. It's my understanding that the Long Term Segregation Unit contains two levels, two classification levels of LTSU inmates. One is referred to as Level 1. The other is referred to as Level 2; is that correct?
A. That's correct.
Q. Level 2 is the level that inmates who are newly introduced into LTSU confinement are given?
A. That's correct.
Q. And Level 2 can also result when an inmate who has been promoted to Level 1 has done something to warrant a reversion back to Level 2 status?
A. That's correct.
Q. The A side and the B side, do each of those sides contain either Level 1 or Level 2, or are the two levels commingled?
A. They are presently commingled, although we try to segregate as much as possible certain inmates from others. Right now, there is a low number of Level 1 inmates. So cell space requires us to commingle the two.
Q. So under ideal circumstances, assuming that you have enough cells to house all of the Level 1 inmates that you have and all of the Level 2 inmates you have –
A. We would segregate.
Q. – you would segregate?

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A. Yes
Q. Are there times when you have been able to do that?
A. At least in the fashion of one pod, yeah
Q. I'm not going to go into detail with you about the various other policies and practices that exist in the unit, such as how long they're allowed out of their cell for recreation and visits and that sort of thing, because we have an answer to our complaint There are certain acknowledgments of those facts
But if I reduce it to its essence, this is a very high security segregation area in which the inmates are essentially in their cells for all but an hour or so a day; is that right?
A. That's correct.
Q. And are these cells single-occupant cells, or are there two inmates to a cell?
A. They're all single-occupant cells.
Q. Is that a matter of policy?
A. Yes
Q. So an inmate in one cell is separated from an inmate in another cell by a

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wall and by the doors that front the respective cells, is that right?
A. Yes
Q. So an inmate can't just open up his cell door and walk next door, for example, and then go into another inmate's cell?
A. No.
Q. That's prohibited, in fact?
A. Yes.
Q. In fact, it wouldn't even be possible unless an officer opened --
A. Only by mistake would that happen
Q. These cell doors are controlled by an officer in some sort of a bubble or a booth or electronically opened --
A. Yes.
Q. -- is that right?
A. Yes.
Q. How many inmates are typically held in Pittsburgh's LTSU on a given day? I'm only asking you for a rough number. I know it's going to vary probably from day to day to some extent, or I assume that's the case.
A. Actually, it's fairly stable. The central office has agreed to keep our maximum

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population in the LTSU at 40, and generally we have in the high 30s is our population
There are 48 cells on the unit, but this gives us some flexibility to meet some of those segregation requirements and rotation of cells when we have a cell off line or something
Q. Is there any sort of a library facility in the LTSU, either a law library or some sort of a general recreational library?
A. There is a mini law library in the LTSU
Q. There is no recreational law library in the LTSU, is that right? By recreational, I'll define that. What I mean is kind of a general circulation type library where you have books of fiction --
A. No
Q. -- biographies and that sort of thing?
A. No.
Q. Does the institution maintain a general circulation or general recreation library anywhere in the complex?
A. Yes.
Q. Where is that located?

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A. It's collocated with the school.
Q. It's in the school building?
A. Right.
Q. That library, does that also contain a law library?
A. Yes, it does.
Q. Is there somebody who supervises that library, like a librarian?
A. Yes.
Q. Does the librarian supervise both the law library and the general recreational library?
A. Yes.
Q. Do you know the name of the person who functions as the chief librarian?
A. I do.
Q. Who is that?
A. James West. I don't know how to pronounce it. We call him West. I have the spelling. Let me see if I have it on a piece of paper here. I'll have to look it up, because it's got a lot of different consonants in it.
Q. Is West kind of a shorthand way of --
A. West, yeah. James West is what he

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goes by
Q He's a civilian employee?
A That's correct
Q Do Long Term Segregation Unit inmates have physical access to the prison's library, meaning can they either on their own or by escort actually go into the library to use it?
A No
Q That's a matter of both policy and practice?
A That's correct.
Q How many of the inmates which generally is in the high 30s in the LTSU are Level 2, on Level 2 status?
A Well, as we sit here today, we have a population of 39 total inmates on the LTSU, three of which are Level 1
Q What was the total?
A Thirty-nine.
Q Three or Level 1?
A Correct.
Q Is that breakdown typically the case, somewhere in the 30s are Level 1 and a lower number level – I'm sorry Did you say

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three were in Level 1?
A Correct.
Q So that would mean 36 are on Level 2 as you speak?
A That's correct.
Q Is that a typical ratio, with a substantial majority being Level 2 and the minority being Level 1?
A I would say in general, yes. These may be a little bit skewed today, because we recently had a number of Level 1s that were moved, but generally in the single digits for a Level 1 and the remainder being Level 2.
Q As a matter of DOC policy, is there a minimum amount of time that an inmate must remain on Level 2 status before being eligible for placement on Level 1 status?
A Yes.
Q How long is that time?
A Ninety days.
Q As a matter of DOC policy, is there a maximum amount of time – an outer limit, in other words – that an LTSU inmate can remain on Level 2 status?
A No.

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Q So under DOC policy, a given inmate can remain on Level 2 status in the LTSU for a matter of many months or even several years; is that true?
A Yes
Q Can you tell me what the typical length of confinement on Level 2 status is? Just roughly, from X-number to X number of months or whatever I know we're fairly early into it, because it only opened in – was it 2000?
A Right. April of 2000
Q So we –
A Two-and-a-half years into this I wouldn't even hazard a stab at it. Many of the inmates that we have that are on Level 2 now came here to us in April of 2000 and have remained on Level 2. And some inmates that have subsequently arrived here have passed through Level 2, Level 1, and moved on to other institutions. So
Q Whether they moved from Level 2 to Level 1 is a determination that is – obviously is a determination that is made by prison officials; true?

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A True.
Q That's based upon the conclusions by the officials as to whether or not a particular inmate on Level 2 has progressed to the point where in the judgment of prison officials it would be warranted or appropriate to promote that inmate to Level 1; is that right?
A That's correct.
Q Is there either a document that reflects on kind of an ongoing basis, whether each month or every few weeks, how long a particular inmate has been on Level 2 status, or are there documents from which, even if it's not explicit – in other words, even if it doesn't say eight months – are there documents from which, if I had the documents, I could look at them and calculate how long the various inmates, the respective inmates, have been on Level 2 status?
A Yes
Q Which is it? Is there a document that keeps kind of a running tally of how long an inmate has been on Level 2 status?
A Yes.
Q Is that found on some sort of a

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compilation that would contain the names of all of the LTSU inmates, or is that something that could only be gleaned by looking at the individual institutional records of the particular inmate?

A. I don't know that we have a management tool that lists all the inmates and has all of their disciplinary custody times reflected on it.

Q. Disciplinary or you mean level times?

A. Both. Generally, those types of documents will be individual documents for that particular inmate.

Q. There is a document that contains, I assume, that contains a roster of the names of, for example, the 39 inmates who are there today? Each of their names will be on some sort of a list?

A. Yes. For instance, this is a roster, the recent roster. This one is dated June 3rd, '02.

Q. What information does that roster contain, other than the names and the institutional numbers of each of the inmates?

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Does it contain any other information?

A. This particular document contains the arrival date of the inmate, his inmate number, his name, the level that he's currently on, the counselor's initials, and when he's due for an annual review.

Q. I couldn't look at that -- in other words, the fact that it says inmate John Smith and that is his tenth month, and it would show that he's on Level 2 or Level 1; right?

A. It would show his level, but it wouldn't show how long he's been on that level.

Q. What I was going to say is: You'd get a skewed idea if you simply looked at that document, because it's possible that John Smith came in on Level 2, was on Level 1 --

A. That's correct.

Q. -- for six months, and now he's back on Level 2?

A. That's correct.

Q. Do you think that there is some way that a computer could generate -- one of the computers that you have in the institution that could generate the names of the respective inmates, how long they have been in the LTSU, and the total amount of time they have been on Level 2 status?

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A. Yes.

Q. I'd like to obtain that document just so that we can get a more specific idea of how long they remain -- I know the superintendent indicated that some of the inmates who came in on Level 2 have -- I think you said basically they have never left Level 2?

A. That's correct.

Q. Then others have left, and, in fact, others have left the entire unit itself.

MR. MERICLI: Well, the only difficulty with that is if discovery closes.

MR. KRAKOFF: I know. I would just end up at some point subpoenaing that information. So it might help us --

MR. MERICLI: All right.

MR. KRAKOFF: -- I would appreciate it.

MR. MERICLI: Sure.

MR. KRAKOFF: And I won't insist that you answer all my interrogatories on time, which is today.

MR. MERICLI: I know. I left a message for that.

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MR. KRAKOFF: And that wasn't sarcasm.

MR. MERICLI: All right.

MR. KRAKOFF: That was an attempt to be nice.

BY MR. KRAKOFF:

Q. What are the basic purposes and objectives of the Department's Long Term Segregation Unit? You don't have to -- I have summaries and some of the policies. But in a nutshell, what's the purpose and what are the objectives of the --

A. I suppose one of the primary purposes is to further ensure the safety and security of the Department. And secondarily, but certainly important, is to try to affect some behavioral change of the inmates that are assigned to the LTSU.

Q. Do the basic purposes of the Long Term Segregation Unit differ from the purposes of the Department's Special Management Unit?

A. I think obviously the overall purpose of the Department is to change behaviors, change unacceptable behaviors.

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Inmates that come to the LTSU in many cases have proven that the efforts in the Special Management Units have failed in that regards

In other words, the SMU is obviously a phase program, and it's structured in such a way as to change or modify behaviors to a more acceptable level. And as I say, many of the people that are in the LTSU now have failed to respond to the SMU environment.

Q. If I understand you then, the SMU stresses behavioral changes more, say, than the LTSU, is that right?

A. No. I wouldn't say that. What I'm saying is that the SMU is a -- I wouldn't say interim, but it's a level of effort to modify an inmate's behavior, and the LTSU is a more strict environment because of particular behaviors that this inmate may have demonstrated in the SMU.

Currently, the State's population roughly is about 38,000-plus inmates in our system, and what we have here in the LTSU represents one tenth of one percent of that overall population. And they are the most incorrigible, the most difficult, problematic,

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and have demonstrated the most behavior conflicts, if you will.

So we're all in the same effort to modify behavior, but these inmates have in many cases, most cases, have failed to respond to an SMU environment.

Q. So most of the inmates in the LTSU are people who have flunked out of or failed in the SMU?

A. That's an accurate statement. Yes.

Q. In a minority of cases, a person, I suppose, an inmate can come directly from some other prison where he wasn't in an SMU -

A. That's true.

Q. - to the LTSU, is that right?

A. Yes. That's true.

Q. Does SCI Pittsburgh have a Special Management Unit?

A. No.

Q. Where are the Special Management Units located within the system?

A. SCI Greene and SCI Camp Hill.

Q. Would the total population of the Special Management Units, to your knowledge, exceed that of the 30-something-odd inmates who

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are usually in the LTSU?

A. Yes.

Q. Do you have a sense of how many inmates have -- I'm using the word graduated. I don't know. You might have given a term that you use here, that is, promoted or been released from or something like that. But you understand what I mean by graduated?

A. Yes.

Q. Do you have a sense of approximately how many inmates have actually graduated from the Long Term Segregation Unit since its inception?

A. It's my understanding that so far twelve have left the LTSU. Two inmates have maxed out, and the other ten have moved on to other institutions.

Q. Under DOC policy, is Long Term Segregation Unit confinement considered a form of Disciplinary Custody?

A. Yes.

Q. Is it a form of Disciplinary Custody in the sense that inmates are sent there because they have been adjudicated by a hearing officer to have violated the DOC's rules, or do you mean

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disciplinary in some other fashion?

A. In most cases inmates come to the LTSU with Disciplinary Custody time. There have been some cases where inmates have come on Administrative Custody status.

Q. So the status -

A. But the reasons -- the main reasons for an inmate to come to the LTSU are the SMU failures, the behaviors, unacceptable behaviors in other institutions. So from that perspective, if we use the word discipline or disciplinary in a general sense, yes.

Q. But they're not necessarily serving disciplinary time; isn't that right?

A. They may not be.

Q. And, in fact, when an inmate comes into the LTSU with disciplinary time, that time eventually will expire?

A. True.

Q. Is there a document that reflects which of the inmates who are in the LTSU now actually are on Disciplinary Custody status as opposed to just Administrative Custody status?

A. Again, I'm not sure if we have one specific document that shows that.

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Q But --
A It would be easily retrievable from the mainframe or wherever, you know, as far as specific inmates
Q With respect to -- and I'm going to get into the specifics in a little while, but with respect to access to newspapers and access to magazines and access to books and access to photographs of family members and friends, does the policy or practice in the LTSU draw any distinction between those inmates who are on Level 2 status serving disciplinary time and inmates who are on Level 2 status solely on an Administrative Custody --
A. No.
Q. -- basis? They're both treated the same?
A. Correct.
Q As a broad proposition, would it be accurate to say that under DOC policy, the Long Term Segregation Unit is considered a form of Administrative Custody?
A. I'm not sure I understand the question
Q There is a -- is it AD# 802 that

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talks about --
A. Governs --
Q. -- Administrative Custody?
A. Right.
Q. Does that document, to your knowledge, place the LTSU under the rubric of Disciplinary Custody, Administrative Custody, or some other form of custody, if you know?
A. Well, the 802 doesn't address LTSU specifically.
Q. Is there any other document that you can recall which specifies whether this is a form of Administrative Custody or a form of Disciplinary Custody or some other --
A. Well, 6 5 1 DOC policy, our procedure manual, 6.5.1 references both under the LTSU and under the RHU specifically, addresses the 801 and the 802 which govern either Disciplinary Custody or Administrative Custody.
Q Now I want to focus our attention on DOC policies with respect to publications and then later photographs, access to photographs.
Under DOC policy, are general population inmates permitted to obtain

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newspapers from the outside, meaning from society, in any way?
A Yes
Q How may they obtain newspapers?
A They may individually subscribe to them through the mail, or they may access them through the -- they can buy them in the commissary, and they can also read them in the library
Q Isn't it accurate to say that no newspapers or articles from newspapers are permitted to come into this institution by regular mail unless the newspaper is sent directly from a publisher? Is that accurate to say? In other words, a relative or a friend isn't permitted to just send a newspaper into an inmate, or am I wrong on that?
A An inmate can't receive a newspaper directly from a relative You're right. It has to come from the publisher
However, you mentioned newspaper articles. That wouldn't be the case For instance, if there were some article, an obituary, for instance, or an article about somebody's neighbor or whatever that was being

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mailed in by a private citizen, that wouldn't be considered contraband
Q What if it just related to an issue that was not personal to the inmate, if it just was an editorial about the state of our economy or some article about the Middle East or something like that? Can they come in through regular mail from third parties?
A To what population?
Q I'm talking now exclusively about general population
A Yes, they could
Q You mentioned newspapers that come in Again, I'm focusing on general population prisoners, and by that I mean inmates who are not in some form of segregation
A. Right.
Q. They're permitted to subscribe. The publisher can then send a newspaper in through the regular mail, and the inmate is allowed to -- a copy -- not a copy. The newspaper is then delivered to the inmate, his cell?
A. Yes.
Q. Is the inmate in general population allowed to retain the newspaper in his cell?

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A. Yes.
Q. Is there any limit for general population inmates as to the number of newspapers they're permitted to receive from publishers through subscriptions? Is there any number? You're allowed to order three newspapers or five newspapers?
A. Not that I know of, no. The only limitation would be the cell property limitations.
Q. Meaning because of security factors or fire code issues, inmates have some limitation on the number of personal property items they're allowed to have?
A. Right.
Q. What is that? Is that done according to the number of boxes they're allowed to have in their cell?
A. Overall, there's a property limitation, yes. If an inmate chooses to have -- well, there's a limitation, for instance, on magazines. They can only have ten magazines at any given time. Newspapers, I'm not sure what the number is.
Q. But it's several? They could have

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several newspapers?
A. Yes. Yes.
Q. If somebody sends in an article from a newspaper, either a relative or a friend or somebody, they're allowed to read that in their cell and retain the article?
A. Yes.
Q. If they purchase -- meaning, general population inmates go to the commissary and purchase a newspaper from the commissary, are they permitted to take a newspaper back to their cell?
A. Yes.
Q. And the rest would be the same. They could keep those newspapers in their cell subject to general security and fire hazard issues?
A. Yes.
Q. Do you know offhand or could we find out if you don't know -- and I imagine you might not know specifically -- do you know what newspapers are sold in the commissary?
A. Let me see. The Post-Gazette weekly and Sunday papers are delivered by the commissary. Inmates can order most any paper.

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It's mailed into the mailroom and delivered to the blocks. And then these --
Q. That's subscription?
A. Right. And then the librarian gave me copies of the newspapers that are available or subscribed to at the library.
MR. KRAKOFF: Mr. Mench, may I --
MR. MERCLI: Sure.
MR. KRAKOFF: Maybe what I'll do is just mark this as an exhibit, and then that will be marked as Plaintiff's Exhibit 19.
(Whereupon, the document was marked as Plaintiff's Exhibit No. 19 for identification.)
BY MR. KRAKOFF:
Q. The newspapers from the commissary, are they delivered to the blocks, or do the inmates go to the commissary and --
A. They would get them at the commissary.
Q. The newspapers that are in the prison's general library, are they circulated? Meaning, can an inmate from general population take a newspaper with him out of the library?
A. I don't believe so. No.

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Q. But if an inmate comes to the library and wants to read one of the newspapers that are subscribed to by the librarian, assuming one is available at a particular time, they're allowed to read them in the library?
A. Yes.
Q. To your knowledge, is there any limitation on -- and you might have spoken to this already. If you have, I apologize for asking it again. But are inmates in general population allowed to subscribe to any newspaper of general circulation in the United States?
I'm not referring to the Communist Daily or MD4 Notes or whatever, but assuming that it meets censorship guidelines or screening guidelines, can an inmate order a newspaper -- can an inmate from general prison population order a newspaper from essentially anywhere in the United States?
A. Yes.
Q. If an inmate wants to order, say, from Puerto Rico or some other country, can they do that as well?
A. Yes.
Q. Let's focus on newspapers with

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respect to other classifications What other classifications of prisoners under DOC policy are permitted to receive newspapers through subscription via the mail and to retain the newspapers in their cells?

I'll just throw out some of the classifications that I'm thinking about If I'm missing some, you can add to that. But I'm thinking in terms of the traditional Disciplinary Custody classification in the RHU, the capital case management or death row I don't know whether Pittsburgh still has one.

A. Not anymore

Q. And the traditional Administrative Custody maximum and Close or whatever they're called I'm contrasting that to LTSU, just your garden variety Administrative Custody.

A. Do you have as one of your exhibits a copy of --

Q. I think I do.

A. -- 6 5 1

Q. Why don't we just identify the document, and we can all save time. Assuming that that's current, are you referring to the -- there's a procedures manual Then there's an

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LTSU handbook.

A. Show me the procedures manual.

There you go.

Q. Okay

A. There's been basically two corrections to this document, not that apply to your specific question, but this is reversed here. This should be -- Level 1 should read as Level 2 and vice versa, and this should say --

Q. The same information --

A. This has just been reversed It's been transposed, and this should read "any approved visitor". But with regard to incoming publications, that document is currently what we follow.

Q. So that we can identify for purposes of this deposition what that document is, it's Attachment A to Plaintiff's Deposition Exhibit Number 8, and it's a chart.

(Whereupon, the document was marked as Plaintiff's Exhibit No. 8 for identification.)

BY MR. KRAKOFF.

Q. The reason I asked that was because I didn't have -- in the copy that I received of

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Attachment A, the top headings didn't come out So why don't we label -- there are three categories?

A. Correct

Q. The one on the left, should the heading of that be RHU?

A. Correct

Q. And the one in the center of Attachment A, what should the heading of that be?

A. SMU

Q. And the third category, the one on the far right?

A. Is LTSU

Q. I can dispense with those. I have my answers to that question

I'm going to refer you back to Attachment A so that I can clarify Under the RHU category, it says inmate mail and incoming publications Do you see that in the far left column?

A. I see mail incoming publication.

Q. In the far left column-- I might have said category -- the RHU column, the one on the far left?

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A. The RHU, okay

Q. Where it says mail in the category of mail incoming publications?

A. Yes.

Q. This means that an inmate in the RHU can receive legal personal correspondence as per Administrative Directive 803?

A. That's correct

Q. And then it says inmate mail and incoming publications. What does that mean?

A. Mail and incoming publication?

Q. Right.

A. Well, that would be what we're speaking of --

Q. That would be the category?

A. That's the activity or whatever or the category running down the first left column

Q. So ADM 803 would describe --

A. That governs mail.

Q. And incoming publications?

A. Right.

Q. So if I want to see what inmates in the RHU are entitled to receive in terms of incoming publications --

A. Basically, what it says is that as

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inmate, regardless of -- in this case, it says both statuses -- that means either Disciplinary Custody or Administrative Custody -- can receive one newspaper, ten photographs, and any legal and/or personal correspondence that would be permitted by the 803. So, for instance, things that were -- the Publications Review Committee would allow, those kinds of things.

Q. So what this would mean is, when we say RHU, because you said earlier that the LTSU is in the RHU complex?

A. Right.

Q. This column says that RHU is referring to --

A. The regular RHU.

Q. -- the regular RHU?

A. Correct.

Q. Which would consist of Disciplinary Custody inmates in the regular RHU and Administrative Custody inmates in the regular RHU?

A. Yes.

Q. So an inmate who is in Disciplinary Custody status in regular RHU as opposed to the Long Term Segregation Unit would be governed,

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depending upon what phase he was in, I guess once you reach Phase 2 either --

A. No. Wait a minute. Phases are not a term that we use in the LTSU. Are you speaking of --

Q. No.

A. I'm sorry.

Q. We're in the RHU regular. I don't even know --

A. Okay. There are no phases.

Q. There aren't. Okay. So that I have this pinned down, you're in the regular RHU on Disciplinary Custody status. How many newspapers -- and we can refer to 803. I want to make sure that I'm not confusing anything. Are inmates in Disciplinary Custody status in the regular RHU, are they allowed to receive newspapers in their cells?

A. One newspaper.

Q. One newspaper?

A. Correct.

Q. And are they allowed to exchange that newspaper?

A. One for one.

Q. And where do they receive the

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newspaper from, subscription? Or do they --

A. It would be a subscription.

Q. Subscription only?

A. Right.

Q. Then is an inmate in Disciplinary Custody status in the regular RHU entitled to have any photographs in his cell while he's in the regular RHU?

A. Yes.

Q. How many is he entitled to?

A. Ten.

Q. These can be of family members, friends, or anybody else?

A. They could be of anything as long as it passes the Publication Review Committee's standard.

Q. So you're dealing there with -- they couldn't have nude photographs, for example?

A. Correct.

Q. Then the third column deals with Level 1 and Level 2 in the Long Term Segregation Unit; correct?

A. Correct.

Q. An inmate on Level 1 status in the Long Term Segregation Unit is permitted to have

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one newspaper in his cell; is that true?

A. That's true.

Q. And five magazines; true?

A. That's correct.

Q. And how does he get those newspapers? Do they come from subscription only?

A. Yes.

Q. So he couldn't, for example, purchase a particular newspaper from the commissary, a particular --

A. I don't recall whether or not the newspaper is an item that's permitted to be purchased in the commissary, but I believe it's strictly by subscription.

Q. Can you note, before we leave here, can we track that down?

A. Uh-huh. If you would like, let me step out here for a minute.

Q. I'd appreciate that. Okay.

(Whereupon, a brief recess was taken.)

A. To answer your question, newspapers are on the commissary list for a Level 1 inmate. So they can obtain a newspaper either

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by purchasing it at the commissary or subscribing to it

Q Did I ask you what newspapers are available in the commissary?

A According to this note I got from my secretary, Post-Gazette weekly and Sunday papers are delivered to the commissary.

Q In no instance, whether an inmate is in the general population, in the RHU regular, the Administrative Custody regular, or the Long Term Segregation Unit are people allowed to simply drop off a newspaper for an inmate; is that right?

A Correct. I would say -- let me say that Inmate X in general population could give Inmate Y a newspaper.

Q I understand that.

A Okay

Q You have seen old movies where somebody will come with a pie and deliver a pie for an inmate?

A. Right

Q Then it will be brought to his cell?

A No

Q That doesn't happen here with

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newspapers; does it?

A No, it doesn't.

Q Is a Level 1 inmate in the Long Term Segregation Unit allowed to receive articles from newspapers through the mail while he's on that level?

A. Yes.

Q So he could receive particular articles?

A. Yes.

Q Let's focus on Level 2. What is the policy with respect to the receipt of newspapers by Level 2 Long Term Segregation Unit prisoners?

A. They're prohibited.

Q What about a situation where somebody sends in a particular article from a newspaper that's been clipped and placed in regular mail? Is an inmate allowed to receive that?

A. It depends.

Q. What would that depend upon?

A. Generally -- well, you used the example -- we used the example before that if it had some connection to the inmate, we wouldn't stop that from going in.

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Q But if it didn't have a connection, as a general proposition, that's not going to be allowed in; is that correct?

A That's correct

Q Since I believe your testimony was that the newspapers don't circulate from the main recreational prison library, an inmate on Level 2 status is not going to be able to obtain one of the newspapers that is subscribed to by the general library, is that true?

A. That is correct

Q And there are no newspapers on the unit, in the Long Term Segregation Unit, which may be provided to inmates from officers under the existing policy; is that correct?

A. Correct.

Q Again, if this is the second time, a Level 2 Long Term Segregation Unit inmate does not have access, physical access, to the main prison library, meaning he can't be escorted to and does not go on his own to that library; is that right?

A. That's correct

Q Is there a policy that prohibits Level 1 inmates who have the one newspaper that

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you were talking about from providing that newspaper to a Level 2 prisoner?

A Yes

Q That's strictly prohibited; isn't it?

A. Absolutely.

Q. If corrections officers find a newspaper in the cell or in the possession of a Level 2 inmate, that would be considered contraband; true?

A. True.

Q And that will be confiscated from the inmate; will it not?

A. Yes.

Q As a matter of fact, that would be considered some sort of violation of prison disciplinary rules that could subject the inmate who has that contraband, could subject him at least potentially to some sort of disciplinary action?

A. Yes.

Q And that would certainly, I would assume -- and correct me if I'm wrong -- that would be something that could in fact retard any or delay any promotion from Level 2 to Level 1?

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I'm not saying in itself necessarily, but that would be a negative blot on his record?
A. Sure
Q. The mini library that you referred to earlier in the Long term Segregation Unit, is that in a special room of some sort?
A. Yes.
Q. Inmates, are they given direct physical access to the mini law library, or do they simply order things from the mini law library to be brought to their cell?
A. They physically go to the mini law library
Q. If there is a policy, how many inmates are allowed at any one time in the library? Is it one?
A. One.
Q. Is there some sort of a time limit on how long a particular inmate can spend? Is there a general time frame on a particular visit?
A. Generally, there are -- I believe it's a two-hour period of time that they're in the mini law library at one time for one session

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Q. Is there a limit -- can they go to the library more than once a week?
A. Depends on the demand. And it's a matter of, you know, first come, first serve kind of a thing. And they maintain a roster of people requesting time in the law library.
Q. Obviously, there are no newspapers in the mini law library; is that right?
A. Correct.
Q. Are the only books in the mini law library are legal materials?
A. Right.
Q. Have there been occasions where inmates have been admitted to the Long Term Segregation Unit and therefore initially placed for at least the first 90 days on Level 2 status, have there been occasions where those inmates came into the Long Term Segregation Unit with subscriptions to newspapers?
A. I'm sure there are.
Q. Is there a policy that says what's to happen to the newspapers that are coming in through that subscription?
A. They're held for them in their property, but they're encouraged to cancel their

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subscriptions since they're not allowed to have them
Q. That property will be kept -- they don't have access to those newspapers in their property?
A. (Witness shaking head.)
Q. Is it a box of some sort?
A. Right.
Q. They don't have access to that?
A. They do not
Q. Any newspapers that an inmate has accumulated prior to coming into the Long Term Segregation Unit, those newspapers are taken and either stored, or, I suppose, with the consent of the inmate, either sent out of the institution or destroyed; is that right?
A. That's correct. When it reaches that volume that's permitted, yes.
Q. General population inmates are permitted to have magazines in their cells?
A. Yes.
Q. As with newspapers, they can order a magazine directly from a publisher by subscription; is that true?
A. Correct.

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Q. And are they permitted to receive articles from third parties from outside the prison in envelopes? Somebody clips an article, sends it to an inmate who is in general prison population from a magazine. Is the inmate ordinarily allowed to receive the article?
A. Yes
Q. At least with respect to general population inmates, those articles don't necessarily have to relate to the inmate or his community; is that right?
A. That's correct.
Q. So if it's an article about some political event, some cultural event, or whatever, that can come in whether it deals with the inmate or his family or his community?
A. True.
Q. Are magazines in the -- I'll call it the main prison library or the general circulation library. Does that receive magazines for inmate use on the premises via subscription, to your knowledge?
A. Yes. In fact, I'm not sure, but I think I saw some magazines on this list I gave you.

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MR. MERICLI: All I noticed was Newsweek, which had been canceled.
THE WITNESS: There may be another set.
MR. MERICLI: And a reference to the New York Times magazine, which had also been, I believe, canceled.
THE WITNESS: Then I'd have to -- I need to check just to verify with the librarian.
BY MR. KRAKOFF:
Q. Will you do that now so that we don't forget, if you don't mind.
A. Sure.
Q. Thanks. I'm going to ask about whether those are allowed to circulate out. You might know that already. It may be the same as newspapers.
A. No. They're not going to be allowed outside the library.
(Whereupon, a brief recess was taken.)
A. The librarian went to lunch. He's going to call me when he comes back, and we'll get an answer.

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Q. Are magazines, individual magazines, sold in the prison commissary?
A. I don't believe so.
Q. Maybe that's something else we can confirm. Are you pretty sure they don't sell --
A. I can check on that, but I am pretty sure we don't sell magazines through the commissary. They have to subscribe to them.
Q. So there's a difference. One is an inmate walks into the commissary, which I assume that there are some goods in the commissary that they sell?
A. Right.
Q. So he walks into the commissary store or exchange or whatever. One scenario is there are magazines there. He can purchase it, gives the person in charge of the commissary some tickets for the purchase price, and then walks out.
The other is that he can get a subscription form from the commissary. The third is he has to write away to the magazine publisher and get a subscription. Is it the third thing that you think --
A. Right.

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Q. We'll confirm that though. Can I refer you back to Deposition Exhibit 8, that Attachment A? Can you interpret this for me? With respect to regular RHU Disciplinary Custody, are they entitled to have any magazines in their cells through subscriptions?
A. No.
Q. What about Administrative Custody?
A. No.
Q. Level 1, Long Term Segregation Unit inmates, magazines?
A. Correct.
Q. What is this -- it says one newspaper, five magazines. Does that mean that they are entitled to have five magazines?
A. That's correct. Level 1s can have one newspaper on a one-for-one exchange and then five magazines. Of course, that would be a one-for-one exchange as well.
Q. The five magazines would have to be obtained through --
A. Subscription.
Q. So somebody on a regular Administrative Custody, did I understand you correctly on regular Administrative Custody in

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the RHU is not allowed to have magazines?
A. That's correct.
Q. Level 2 Long Term Segregation Unit inmates, are they permitted to have any magazines?
A. No.
Q. So there is no place on the unit that they can obtain a magazine, either from an officer or in the law library or from another prisoner who happens to be Level 1, there is no way that they can have any magazines in their cells under any circumstances; is that correct?
A. That's correct.
Q. What is the policy with respect to inmates on Level 1 of the Long Term Segregation Unit receiving articles from magazines that are sent in by relatives or friends or somebody else on the outside into the unit? In other words, something clipped from Time Magazine or Newsweek, are they allowed to receive those?
A. Yes.
Q. Would those articles be limited, as in the case of newspapers, to articles that have some personal connection to the inmate or some connection to his specific community?

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A No
Q So they can receive clipped articles that deal with the Middle East or any other thing?
A Yes
(Whereupon, there was a brief interruption)
MR KRAKOFF Why don't we go back on the record
BY MR KRAKOFF
Q Even though there is not a specific question, you can --
A He's going to bring a list of the magazines that are subscribed to in the library
He clarified one thing that may or may not be of interest to you The newspapers and magazines, once they are ready to be discarded by the library, are provided to our SNU and the hospital and our clinic units These are inmate populations that generally don't have access to the library
Q Which would be the Special Needs Unit for SNU?
A Right.

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Q The hospital, and what was the --
A The other one is what we call the clinic, but it's actually our reception unit.
Q These are where new inmates come into the system?
A Right. They're segregated from our general population for a period of time And the question you asked about the listings, there is no specific list by title that the LTSU inmates can review. How they go about obtaining the books is by subject matter, author, or if they know the title
Q So if they want a book about President Teddy Roosevelt, can an inmate request the staff? Is that the way they would do it?
A There is a specific --
Q Form?
A This is the form. In fact, if you have the inmate handbook, you should have a copy of that form.
Q Let me identify the inmate handbook by number, which is Plaintiff's Exhibit Number 9.
(Whereupon, the document was marked as Plaintiff's Exhibit No. 9 for identification)
A What is the date?
Q October 4, 2000
A You have -- this has been -- the handbook, inmate handbook, was revised in January of 2001 So this version is obsolete
MR KRAKOFF Can I have that, Mr. Mericli, since there's been a more recent inmate handbook?
MR MERICLI For SCI Pittsburgh?
MR KRAKOFF Yes, for the Long Term Segregation Unit?
MR MERICLI For the Long Term Segregation Unit.
MR KRAKOFF Right.
MR MERICLI Okay.
BY MR KRAKOFF
Q When did that come out?
A January 2001
Q So that would be about five months after Plaintiff's Exhibit 9?
A Well, there's some significant changes though Okay?
Q Yeah. I would like to see that.
MR MERICLI Do you have an extra copy?
THE WITNESS I can make a copy of this one.
MR MERICLI That would be best. And if you can have two copies, one for me and one for him Kathy should have gotten it for us.
MR KRAKOFF I don't think I have that.
MR MERICLI Okay.
THE WITNESS I apologize Mine may have some notes written in it.
MR KRAKOFF Why don't you --
MR MERICLI Get us a clean copy
THE WITNESS We'll get you a clean copy that doesn't have any of my scribbling in it.
BY MR KRAKOFF
Q Is there anything -- while we're here, so I don't have to come back, is there anything that would relate to either magazines, photos, or newspapers, other than the fact that there is a form attached to it for ordering, that would be covered by that, any changes?
A There is nothing of any substance in

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the handbook that wouldn't be covered by that chart that we looked at with regard to privileges
Q May I just see the form that is provided to inmates to order books from?
(Witness hands document to counsel.)
THE WITNESS: Let me get someone on the job to get -- we need two copies?
MR. MERICLI: Yes, please.
MR. KRAKOFF: Maybe what I'll do is make this a separate exhibit
(Whereupon, a brief recess was taken.)
BY MR. KRAKOFF:
Q I can just identify this
A. I'll get you a copy of that as well.
Q I'm going to identify this as Plaintiff's Exhibit 20.
(Whereupon, the document was marked as Plaintiff's Exhibit No. 20 for identification.)
BY MR. KRAKOFF:
Q This comes from the revised Long Term Segregation Unit Rules and Regulations, Inmate Copy, dated January of 2001 which I'll be

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receiving sometime in the future. This is the last page of that document. It says RHU Law Library Book Request Slip. That's going to be Plaintiff's Exhibit 20.
How does this system work? What is the procedure for an inmate in the Long Term Segregation Unit to obtain a book from, if you know? Apart from, I take it, that the inmate fills out this document?
A. Right.
Q. It tells what kind of book or what category of book he wants?
A. Right.
Q. Or a specific title, if he knows it?
A. Right.
Q. And then somebody delivers that request slip --
A. The librarian assistant makes at least two trips to the LTSU weekly. They will pick up the slips, and a few days later the books should be delivered to the inmate.
Q. The inmates who are on Level 2 status in the Long Term Segregation Unit, they can participate in this book system; is that right?

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A. Yes.
Q. Is there a limit on the number of books an inmate is allowed to receive per week?
A. Two books.
Q. They can keep those in their cells. They can read them in their cells?
A. And they exchange it one for one.
Q. So they finish the first book. They start reading the second book, and they can in the meantime order another book?
A. That's correct.
(Whereupon, there was a brief interruption.)
MR. KRAKOFF: Is this a clean one?
THE WITNESS: Yes.
MR. KRAKOFF: Pursuant to an agreement that we have, I'm not turning anything over without telling Mr. Merich. I'm not giving anything to any of the inmates
THE WITNESS: Please don't.
MR. KRAKOFF: No. No. If I assume down the line that there may be a need for me to share anything with the representative plaintiffs, Mr. Merich will be informed of that fact.

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MR. MERICLI: And I can go to court.
MR. KRAKOFF: If we can't reach an agreement, but I'm not going to turn anything over, even if it appears to be innocuous.
MR. MERICLI: I want to say as well that I have had the pleasure of working with Mr. Krakoff in at this point, at least coming to the top of my head, three major cases where we had these confidentiality agreements, and they have never been breached.
THE WITNESS: We certainly appreciate that, because even though it may seem innocuous, oftentimes there are security and safety issues that are associated with the release of some of these documents.
BY MR. KRAKOFF:
Q. So that I understand though with respect to this document which will be marked Plaintiff's Exhibit 21, Long Term Segregation Unit Rules and Regulations, Inmate Copy, does that mean that the inmates receive these?
A. Absolutely. The day they get here, they get a copy of that.
Q. I'm still not going to turn this -- in fact, there is no need for me to turn this

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over to any of them, because they have --
A They already have one Right
Q This will not be turned over to them This will be marked Plaintiff's Exhibit 21
(Whereupon, the document was marked as Plaintiff's Exhibit No 21 for identification)
BY MR KRAKOFF
Q Before we took a break, I was asking you about specific articles being cut out and sent into the Long Term Segregation Unit
So that I understand correctly, Level 1 inmates can receive specific articles from friends or neighbors, relatives, any third person? They can receive specific articles from magazines through the mail, is that right?
A Yes. So could a Level 2
Q And a Level 2 inmate who receives a specific article, I believe you testified that that article from a magazine doesn't have to relate to the inmate in any way? It can just be some general --
A I think you got it reversed
Q Okay

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A. The Level 2 inmate, there should be some nexus between the content of the article and the inmates.
Q Okay Level 1 inmate?
A. Level 1 inmate would be regardless of what the topic was But because obviously they have access to a magazine, they have access to a newspaper, there is no -- there is no...
Q So as I understand it then, the access of inmates on Level 2 status in the Long Term Segregation Units to specific magazine articles sent in from -- clippings sent in from third parties, that's much narrower than what the access that inmates on Level 1 would have to magazine articles, is that true?
A. Yes.
Q It's much narrower and different than what inmates in a general prison population would be allowed to receive?
A. True.
Q. So the nexus to an inmate -- and I'm not going to ask you to give me every scenario, but it might be something about -- it could be an obituary about a relative dying that a Level 2 inmate would be allowed to receive; true?

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A. Uh-huh
Q Or maybe an article about one of his relatives that appears in the magazine that was cut out?
A Uh-huh
Q But if it's about President Bush doing something or the stock market or something of just general interest to the community at large, that is not going to be available to the Level 2 LTSU inmate, correct?
A Correct.
Q The final topic of articles that I want to -- article is a poor choice of words Items that I want to discuss with you relate to photographs. We can go back to the chart or the attachment on Plaintiff's Exhibit 8.
An inmate in the RHU on Disciplinary Custody status, the garden variety, regular, I think is the way we're referring to RHU status as opposed to -- let me start again
I'm focusing first on Disciplinary Custody in the regular RHU is an inmate permitted to have any photographs in his cell?
A Yes
Q How many photographs is a regular

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RHU Disciplinary Custody inmate permitted to have while he's serving his disciplinary time?
A Ten.
Q Is an inmate on Disciplinary Custody status, regular RHU Disciplinary Custody status, is he permitted to bring photographs that were in his possession before he was transferred into Disciplinary Custody status, or is he required to receive those through the mail while he's in Disciplinary Custody status? Do you know what I'm saying?
A. I understand your question I'm not sure I know the answer. I believe that they can bring photos from their cell, in their cell property, to the RHU
Q Do you know whether they're allowed to receive photographs after they have been placed --
A. Yes.
Q. -- in Disciplinary Custody?
A. Up to the limit of ten.
Q. So Mr. X is convicted of refusing to obey an order, is sentenced to the RHU, Disciplinary Custody status for 30 days or whatever. While he's in there, somebody can

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send a photograph in to him, and he's allowed to have that in his possession, assuming it doesn't violate any nudity provisions?
A. Right.
Q. Or other security matters, right?
A. That's correct.
Q. Do you know what the rule is with respect to the Special Management Unit inmates? I know you don't have one here
A. Only what I can read here
Q. Then I can read that. Then what about Administrative Custody inmates in the regular RHU? Are they permitted to have photographs?
A. Yes
Q. How many?
A. Ten
Q. They're permitted to either bring them in, to the best of your knowledge, or to receive them through the mail while they're in Administrative Custody?
A. Correct.
Q. The Level 1 Long Term Segregation Unit inmate, is that inmate allowed to have any photographs in his cell?

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A. No
Q. And Level 2?
A. No
Q. The photographs that the categories of inmates are permitted to have in their cells, we talked about in general prison population, Administrative Custody, and routine regular Disciplinary Custody, do those photographs have to be of the inmate's family or friends? By family, I mean relatives, a spouse, children, or friends; or can they be broader than that?
A. Is this in general population?
Q. Yes, in general population
A. Actually, if they're allowable photographs, it doesn't matter
Q. It can be of anything? It could be of a mountain?
A. Right.
Q. What about in the – that was general population; correct?
A. Right.
Q. What about photographs for RHU, Disciplinary RHU, Administrative, can it be of anything?
A. They're allowed to have photos, and

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the photos are allowable by the 803. The subject matter of the photo doesn't matter
Q. If a Long Term Segregation Unit inmate is found to have a photograph in his possession, either on his person or somewhere in his cell, is he subject to having that treated as contraband and the photograph taken from him?
A. Yes
Q. What will happen to a photograph? I don't know if you have ever had that happen?
A. Yes
Q. What happens to a photograph that's taken as contraband?
A. It's placed in his property
Q. If a photograph is mailed in to an inmate at the LTSU, who is an occupant of the LTSU, what will happen to the photograph if – I assume that if the envelope is open and the mailroom employee sees that there is a photograph, sees that the person is in the LTSU, what happens to the photograph?
A. The photograph will go in the inmate's property
Q. The inmate is not, while he is an LTSU prisoner, is not allowed to go to his

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property and look at those photographs; is that right?
A. The only reason would be occasionally inmates are allowed to go to their property to obtain different things, you know, to exchange a property or something like that. At that time they may, as they go through their property –
Q. They may glance at it?
A. Right.
Q. If an inmate said –
A. "Can I look at my pictures?"
Q. – "Can I look at my pictures?"
A. No.
Q. Can't do that?
A. Right.
Q. Is an inmate –
(Whereupon, there was a brief interruption.)
MR. KRAKOFF: Why don't I – maybe you can help the deputy with various exhibits. What I'm going to do is I'm making reference to these exhibits. They're just going to be attached. I'm not offering. Obviously this isn't an evidentiary –

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MR MERICLI Sure
MR KRAKOFF I'm going to probably attach most of them 1 and 2 are the interrogatories and the answer I'm not going to deal with those.
(Whereupon, Plaintiff's Exhibit No 3 was marked for identification)
BY MR KRAKOFF.
Q So Plaintiff's Exhibit 3, this is a grievance document addressed to Ronald Banks It's from Carol?
A Scire.
Q She's the regular prison grievance officer?
A She's the grievance coordinator Right.
Q You'll see this says, "The items that were confiscated were deemed not to be religious material by Deputy Dickson and the Chaplaincy Department You are currently a Level 2 in the LTSU and are not permitted magazines or newspapers."
You may not remember the specifics of this I refer you also to Plaintiff's Exhibit 4, which relates to the same matter.

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I'm not going to ask about what specific document was involved, but do you recall how the religious issue became involved? What relevance does whether something happens to be religious material have to the receipt of either a magazine or a newspaper, if any?
A. Well, procedurally, we go back to what is allowable and what is not allowable. Religious materials, if it's determined to be religious materials, an inmate can have up to the limit of his one records box of religious materials
If there is a question as to whether or not an item constitutes a religious item, it's referred to the chaplain's office for review And they then make that determination that yes, this is in fact a religious document or not. One of the examples -- and I don't know if it's specifically this or not, because that was over a year ago.
Q This was the Christian –
A. Christian Science Monitor.
Q There were two things. One was the newspaper?
A. Right.

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Q One was a magazine?
A Yeah And the magazine was determined to be a religious document, and he was permitted to have that The Christian Science Monitor, as you know, is a secular newspaper, and it was not deemed to be religious material, and that was denied
Q So the magazine was allowed to come in --
A That's correct
Q -- because it was religious in nature?
A Right
Q The Christian Science Monitor, because it was a secular newspaper, was not allowed?
A That's correct
Q So theoretically if – I'm not asking you to make a decision in this case, but just so I understand it, if, for example, somebody sends in the Watch Tower, I don't know if you're familiar with that?
A. Jehova's Witness document?
Q Right Something like that that might be considered religious in nature?

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A I would assume that that would be legitimate religious material. We're not -- we don't -- we're equal opportunity here as far as that regard.
Q There's another interest at stake here, and that is not so much the right to read in general, assuming there is such a right, but religious freedom is at issue?
A. Absolutely.
Q You have something that may draw – I assume that's what the distinction is, that this is something that because of the First Amendment right to engage in religious issues, you're going to make an exception to the general rule about magazines or books?
A Correct
Q So a Bible can come in?
A Right.
Q A Koran can come in?
A. Right.
Q. And theoretically, I suppose, or at least arguably if there is a book that comments on the Bible written by some theologian, that may be able to come in, too?
A. Right.

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(Whereupon, Plaintiff's Exhibit No 6 was marked for identification.)
BY MR. KRAKOFF:
Q. Plaintiff's Exhibit 6, this is a document that you apparently sent to LTSU inmates as a whole regarding "GRATERFRIENDS". It's dated February 8th, 2001. I take it that this is your signature?
A. I haven't seen it yet.
Q. I'm sorry. You'll see it will say Plaintiff's Exhibit 6.
MR. MERICLI: Here's 6. This is it.
BY MR. KRAKOFF:
Q. Is that your signature?
A. Yes, it is.
Q. "GRATERFRIENDS" as I understand it – instead of my saying as I understand it, what is the publication "GRATERFRIENDS" in general? What kind of publication is that?
A. It's a newsletter that's published somewhere I believe in the Philadelphia area, and most of its contributors are inmates, for inmates.
Q. But it's published – it's not

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actually publish at Graterford, for example?
A. No. No. I believe it may have had its genesis from inmates or inmates families in Graterford or whatever, but it's expanded.
Q. This is something that a fair number of inmates at SCI Pittsburgh who are in, say, the general prison population do receive "GRATERFRIENDS"?
A. Yes.
Q. Do you know whether this is subscribed to, or is this something that is just –
A. I honestly don't know.
Q. Does "GRATERFRIENDS" deal with, if you know – have you ever looked at issues of "GRATERFRIENDS"?
A. Yes. The superintendent gets a copy, in fact, and he distributes it to the two deputies.
Q. Does this deal sometimes with prison-related, issues?
A. Oh, yeah.
Q. Does this ever deal with issues related to non-prison matters?
A. Yes.

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(Whereupon, Plaintiff's Exhibit No 7 was marked for identification.)
BY MR. KRAKOFF:
Q. Now, Plaintiff's Exhibit 7, which will be in the next folder, this is a document issued June 8, 2000. It's a policy statement, 6.5 I, dated September 1, 2000. Do you know, is this the current policy statement?
A. Yes, it is.
Q. You'll note that it says on the second page of the document, it says Custody Level 5H (CL 5H)?
A. Correct.
Q. What custody level – 5H is the custody level for Long Term Segregation Unit; isn't it? I think that's on page 3.
A. That's correct. It is.
Q. Is that the highest security level in the prison system?
A. Yes.
Q. Then Plaintiff's Exhibit 8 we have already made reference to.
A. I would say that's the highest classification, not incorporating capital cases.
Q. Plaintiff's Exhibit 8, which is a

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procedures manual dealing with administration of Security Level 5 Housing Units, is this the current policy?
A. Yes, it is.
Q. Plaintiff's Exhibit 9, which is that document we discussed before, the –
A. Right.
Q. – October 4, 2000 LTSU handbook. Were you involved in the preparation of this handbook?
A. Yes.
Q. I can just take you through –
A. Do you want to go through this old version? It's kind of overcome by more recent documents. So...
MR. MERICLI: That would be the one that we have as Exhibit 21.
BY MR. KRAKOFF:
Q. I'm not going to question you about this.
(Whereupon, Plaintiff's Exhibit No. 13 was marked for identification.)
BY MR. KRAKOFF:
Q. If you can turn to Plaintiff's Exhibit 13, which is DC-ADM 8027?

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A. This isn't the 802
MR. MERICLI: Thirteen. That's 12. I'm sorry. I gave him the wrong exhibit
BY MR. KRAKOFF:
Q. Does this essentially reflect current policy with some -- as I understand it, there have been a couple --
A. Numerous bulletins
Q. Some bulletins since then?
A. Yes
Q. Does this --
A. I would like to verify that.
Q. Okay. Maybe the way we can do it is, you can just relate to Mr. Mersch if anything -- we're only dealing here with newspapers, magazines, books, and photographs.
If any of this 802 has been revised in connection with those matters, then you can notify Mr. Mersch, and Mr. Mersch will either send me a copy of the policy bulletin, the changes, or he can just relate to me in a letter the changes. Would that be acceptable?
MR. MERICLI: Yes
BY MR. KRAKOFF:
Q. Otherwise, I'm going to assume that

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this policy is current as to anything relevant in this case. Okay?
A. Uh-huh.
THE WITNESS: Is this a point at which I might bring out the 6.5.1?
MR. MERICLI: Yeah. I guess so. I thought he might ask you about it, but he didn't. There have been revisions -- there are proposed revisions to the 6.5.1 that are of some significance to the inquiry that you're making in this case.
There would seem to be, from our point of view, neither any restrictions on disclosing this information to you in terms of higher authorities in the DOC, nor any particular reason not to disclose it to you in connection with this case.
The only problem is that they are still not yet, so to speak, enacted or promulgated, and consequently may not appear in the forms in which they're being discussed right now.
MR. KRAKOFF: Why don't we do this. Why don't we go off the record, unless you would rather remain on the record.

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MR. MERICLI: It's up to you.
(Whereupon, a discussion was held off the record.)
(Whereupon, Plaintiff's Exhibit No. 14 was marked for identification.)
BY MR. KRAKOFF:
Q. Let me show you Plaintiff's Exhibit 14, which is ADM 803. This is dealing with inmate mail and incoming publications. Is this document still current, as far as you know?
A. I think we just got a revision of this.
Q. Maybe what we can do is there is no need for you to get that copied now, but maybe what we can do over the next couple of days is that if you can --
A. I'm going to give you the most recent 802 and 803.
MR. MERICLI: If you could send them through to me.
MR. KRAKOFF: I'll keep this here. You'll send it to Mr. Mersch, and he will send it on to me.
(Whereupon, a discussion was held off the record.)

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BY MR. KRAKOFF:
Q. The question I put to you is: First of all, does the Department of Corrections believe that there are any penological, institutional, or other governmental interests that are related to the policies that I have asked you about today -- namely, access by LTSU inmates, Level 2 -- to newspapers, magazines, to books and to photographs?
And I want to -- I'm just asking you that as a group. Is it the Department's position that these policies, each of these policies, relates to a penological, institutional, or some other governmental interest?
A. Yes. They have penological interest. You mentioned books, which I don't know is, you know, legitimately a part of that group, because I don't know --
Q. I agree with you. As I have found out more about the books, I don't know whether that's in the mix. I'm going to cover it in any event.
A. The penological interests are --
Q. Let's break this down so that we

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have this in kind of a neat -- what penological interest or interests are served, are related -- let me start this again, because it's very important

Will you identify, with respect to the newspaper policies that governs receipt of newspapers and access to newspapers by Phase 2 prisoners, will you describe what penological interest or interests relate to that policy?

A. First, if I may, as I pointed out earlier, we're dealing with the one tenth of one percent of the inmates in the State population that have proven to be the most problematic and the most difficult behavior problems

We have -- I'll start by saying I think there are three reasons why we have chosen to deny certain privileges to inmates in the Long Term Segregation Unit, and the key --

Q. If I may -- and I'm not going to interrupt you once more I promise. So that we know, are the three reasons that you're about to describe, are those three reasons applicable to the newspapers, magazines, and photographs?

A. Yes, they are

Q. So you're going to now identify the

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three penological reasons for those policies; is that right?

A. Yes

Q. Okay.

A. The first and most important one is as a means of behavior modification. And by that, I mean that a privilege is an earned thing based on compliance and modification of negative behaviors.

I think that's the most important reason why we have these privileges and denial of these privileges, and obviously we are attempting to do the best we can to modify the inmate's behavior so that eventually he can become a more productive citizen; or in the fact that he's never going to leave an institutional setting, that eventually he may be able to integrate into the general population in the institution.

The second reason that we use this privilege system and denial of those privileges is that the denial or the reduction of property in the inmate's cell allows us to more carefully and completely protect both staff and other inmates.

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And by, that I mean the more property an inmate has in his cell, the more capability he has to hide contraband or conceal items that he obviously should not have in his cell. So that's another reason for restricting these items

The third reason is that it's been proven that these types of items in the hands of the wrong people can be used against staff or against other inmates as weapons or as items to inflict harm on other people, to the extent of rolling up a magazine and creating a blow gun, using items to fling feces or urine

People obviously are less inclined to use their legal work or their religious materials for that purpose. But for cell fires and things like that, we try to limit, again, those types of items that could be used to create harm to themselves or others

Those, basically, I think, are the three reasons that we have this system And as I point out, the inmates primarily that we have in the LTSU, being a very small fraction of our overall general -- or total population of inmates in the system have proven through their

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previous behaviors that these types of measures, while seeming extreme in your case, actually give us a means or method to say, "You comply, you modify your behavior, and you can obtain these things, these privileges " You know, you have the ability through your own actions to be promoted, if you will, from a Level 2 inmate to a Level 1 inmate, and we do that every day.

We have a system where the Unit Management Team reviews each inmate's progress every 30 days. The Unit Management Team is made up of the unit manager, custody staff, psych staff, nursing staff.

And we try to give and provide the inmate every opportunity to progress through this system and to be able to obtain these privileges.

We're very limited, as I pointed out, in what we can and cannot deny or give to an inmate, and these are some of the items that we feel are legitimate as incentives for inmate growth.

Q. With respect to the physical plant itself, other than the law library, are there any other rooms that would be available for an

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inmate to read a newspaper that he's ordered or a magazine?
A. Of course, if the inmate was authorized to have either of those items, he could certainly do it in his cell.
Q. Assuming he wasn't authorized, assuming that we're living in this same world, and then I could create a reading room where an officer removes a newspaper from either the personal property box or keeps it at the desk or whatever and then walks the inmate into this room, hands him the newspaper, gives the inmate an hour to read the newspaper or the magazine, is there any physical place in the LTSU Unit that could serve as a reading area?
A. No, not that I know of, other than the mini law library. I think that the point here is that a Level 2 inmate, based on his history and behavior -- of course, this is the most restrictive unit in the State with regard to movement, inmate movement.
Only one inmate's allowed out of his cell at a time under the escort of two-- officers. They are in hand and leg restraints in many cases and with the use of a tether.

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So, again, the privilege of being able to read a newspaper or a magazine is one that we view should be an earned privilege. And through an inmate's behavior, they can earn their right to have those items in his cell and read them at his leisure.
Q. Are phone calls in the unit made -- are the phones placed in the inmate's cell, or does the inmate leave his cell to make that phone call?
A. There are inmate-monitored -- or monitored telephones on the unit where an inmate would be brought out of his cell. There is also inmate telephone calls made from the counselor's desk, at which time, of course, they would be out of their cell and in the counselor's office.
Q. They are also taken out of their cells I think three times a week for showers?
A. That's correct.
Q. And they're also taken out of their cells, each inmate, assuming that they want to go --
A. Five times a week.
Q. -- five times a week for exercise?
A. Correct.

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Q. We talked about books earlier. Books are brought into the unit from the law library and given to --
A. From the regular library.
Q. I'm sorry. From the regular prison library. And those, as I understood it, those are given to level --
A. All levels, yes.
Q. So the weapons that you talked about that could be made from a newspaper could be made from paper taken from a book?
A. Well, the only books that are allowed on the unit are paperback books that are, of course, small in nature.
A newspaper can be rolled into a fine tube. It can be used to fish other items from other cells out in the common pod area. It could be rolled to -- actually made into a-- spear. Some inmates are very creative in the things they can do with these materials.
Q. Can this spear actually puncture skin or something?
A. You could poke out someone's eye, certainly.
Q. You say a soft cover. An inmate

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couldn't put that together and --
A. Much less likely.
Q. And that's because?
A. Because of the size of the item.
Q. I know you talked about the LTSU as essentially being the worst of the worst. Would that be a fair way of putting it?
A. Yes.
Q. But there are some very violent inmates in regular Administrative Custody Units at the prison, too. Is that not so?
A. That's true.
Q. Inmates in the Special Management Units can be extremely violent and creative as well in terms of using paper to manufacture weapons or to start a cell fire or to heave feces with?
A. I would say they have the talent to do that. But when they would demonstrate the proclivity for that behavior, they probably would be on their way to the LTSU.
Q. In the LTSU, are there feces heavers currently?
A. It's a cyclic kind of a thing, you know. There'll tend to be a rash of that type

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of behavior, and then it will die off for a while, and it may start again, but it's not constant There's only, I would say -- it's certainly not all inmates either There are a handful that participate in that.
Q Those inmates who heave or are heaving not with newspapers or magazines, they're heaving with their hands; aren't they?
A I would say there's any number of ways they do it Oftentimes it's with the cups that they're given for their drinks, things like that, any type of container, or, as I say, a piece of a paper or whatever wrapped up that they can use to give a little leverage and fling the materials
Q They're allowed to have socks? They wear socks in the unit?
A Sure.
Q And they can heave feces with their socks?
A Well, what I'm getting at is the materials that -- when you have a magazine that has a little bit of rigidity to it which gives you some additional thrust, if you will, whereas a sock is fairly, you know --

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Q But a book, an entire book can give you that same sort of thrust; couldn't it?
A Uh-huh (Witness nodding head.)
Q In terms of cell fires, are inmates permitted to have blankets in their cells?
A Yes
Q Are those blankets fire retardant? Can they start a fire with a blanket if they lit the blanket?
A I imagine they could.
Q They have jump suits-on that are flammable as well, don't they?
A Yes
Q Do they have linen on their beds?
A Yes
Q Bed sheets?
A Yes
Q Are they given writing paper at all?
A Yes.
Q How much of that are they allowed to have in their cell?
A Generally, ten sheets at a time.
Q Are they permitted to have matches in their cell?
A No.

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Q But some of them do find ways of getting matches?
A Yes, they do
Q Have there been any cell fires in the LTSU over the past six months?
A Yes.
Q Approximately how many?
A Within the last six months, I would say no more than two or three.
Q Do you know what the nature of those -- how those fires started, what was used to --
A Paper products generally are the way it's first ignited
Q Is it their writing paper?
A I don't know
Q Do you know of any instance where an inmate who had a magazine in his cell who would have been a Level 1, or a newspaper, used those items for fire?
A No.
Q Wouldn't it be fair to say that if an inmate wants to start a fire, he could start a fire using writing paper in combination with a blanket or in combination with clothing or linen, bedding materials? He could do that;

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couldn't he?
A Yes
Q If he wants to throw feces, he could use a cup for that; true?
A Yes.
Q Or if he wants to throw urine, he can use his cup to throw the urine?
A Yes.
Q Would you say that it would be fair to say that you have identified -- by you, I mean the officials -- on the basis of having these inmates in a cell block, you fairly well know those inmates who are prone to use their personal property in a violent sort of way, at least some of the inmates who -- and I know you can't be sure about these things, but there are at least some inmates in there who the officials would say, "Well, he probably would be somebody who would not use his newspaper, not use his magazine to do violence with"?
A I think that's a fair statement, although I also would tell you that some of them are totally predictable.
Q I understand that. Assuming that inmates were allowed to have -- and I'm just

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assuming for the sake of this deposition, that there were a change of policy. An inmate that was on Level 2 was permitted to receive a newspaper and read it between the hours of 9 o'clock and 12 o'clock in the afternoon and then had to return the newspaper

That would pretty much address the issue of whether they're using newspapers to hide between the pages some item of contraband, wouldn't it? I mean, that newspaper could be checked when the officer gets it back and even thrown out?

A. True, but it wouldn't address the primary reason for the denial of these types of privileges, which is just that so it functions as a privilege, and, again, back to the rehabilitative or modification of the negative behaviors purpose and having a privilege and using it as a reward for positive conduct

Q. Inmates on the LTSU Unit eat their meals inside the cells?

A. They do

Q. Would the meals be passed through the pie hole?

A. Correct. Correct.

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Q. Is that on any sort of tray that they get their meals?

A. Yes

Q. What is the tray made of?

A. It's a hard plastic composition. It's a clear plastic material.

Q. When they pass through, does an inmate keep the tray as long as he's eating, and then he returns the tray?

A. That's correct.

Q. Along with --

A. With the lid

Q. When an inmate is removed from the cell for any purpose, whether to go out to recreation or to consult with somebody in the prison hospital or for any other reason, to make a phone call, do they have to be -- are their hands shackled?

A. Yes.

Q. That's done by putting their hands behind their back?

A. Yes.

Q. Through the pie hole?

A. Yes.

Q. So they're shackled behind their

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back?

A. Yes

Q. What about their legs? Are those shackled?

A. Generally not on the unit itself, but depending upon -- if, for instance, the inmate has exhibited some assaultive behavior, yeah

Q. If I understand, if an inmate either recently exhibited assaultive behavior or has been historically somebody when he's removed from his cell is problematic, that inmate in a particular circumstance --

A. Right. Yes.

MR. KRAKOFF: I think that completes my examination, if I may have three seconds.

(Whereupon, a brief recess was taken.)

MR. KRAKOFF: That will conclude the deposition unless there is something --

THE WITNESS: Just to give you an idea, this is the August schedule for A-3 as far as the library goes. That's how it works up there. This is the listing of magazines that are --

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MR. MERICLI: We'll make these 22 and 23.

MR. KRAKOFF: 22 will be the August 2002 calendar dealing with book deliveries on the unit, and 23 will be -- it's two-sided. It's a document that reflects magazines that are in the main prison library

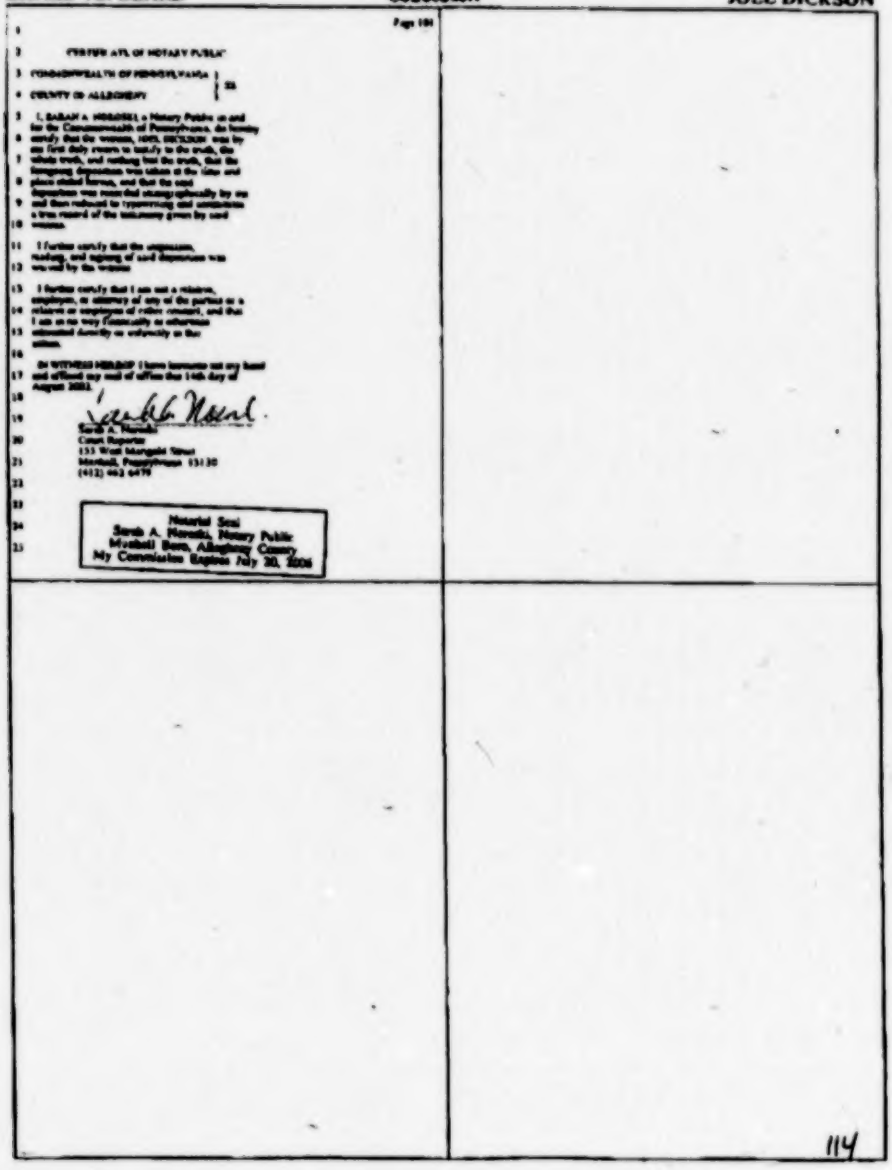
(Whereupon, the documents were marked as Plaintiff's Exhibit Nos. 22 and 23 for identification.)

MR. KRAKOFF: That's fine. That's all. I appreciate it

(Whereupon, signature was waived.)

(Whereupon, this deposition was concluded at 1:01 p.m.)

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CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA }
} SS
COUNTY OF ALLEGHENY }

I, SARAH A. NOROSKI, a Notary Public in and for the Commonwealth of Pennsylvania, do hereby certify that the witness, JOEL DICKSON, was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, that the foregoing deposition was taken at the time and place stated herein, and that the said deposition was recorded stenographically by me and then reduced to typewriting and constitutes a true record of the testimony given by said witness.

I further certify that the signature, reading, and signing of said deposition was not waived by the witness.

I further certify that I am not a relative, employee, or attorney of any of the parties or a relative or employee of either counsel, and that I am in no way financially or otherwise interested directly or indirectly in the action.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my seal of office this 14th day of August 2002.

Sarah A. Noroski
Court Reporter
133 West Market Street
Marshall, Pennsylvania 15130
(412) 462-6479

Notarial Seal
Sarah A. Noroski, Notary Public
Marshall Boro, Allegheny County
My Commission Expires July 30, 2006

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MAG APPEAL
CLOSED

U.S. District Court
Western District of Pennsylvania (Pittsburgh)

CIVIL DOCKET FOR CASE #: 01-CV-1956

ANKS v. BEARD — Filed: 10/18/01
signed to: Judge Terrence F. McVerry
Referred to: Mag. Judge Robert C. Mitchell
mand: $0,000 — Nature of Suit: 555
ead Docket: None — Jurisdiction: Federal Question
in other court: None

ause: 42:1983 Prisoner Civil Rights

NALD BANKS, for himself and n behalf of all similarly tuated prisoners who are nfined or will be confined n Long Term Segregation Units f State prisons located in Western Judicial District Pennsylvania plaintiff	Jere Krakoff (412) 232-0276 [COR LD NTC] 1705 Allegheny Building Pittsburgh, PA 15219 (412) 232-0276
v.	
FREY BEARD, in his official apacity as Secretary of the nsylvania Department of rections defendant	Kemal Alexander Mericli [COR LD NTC] Office of the Attorney General Civil Litigation Section 564 Forbes Avenue 6th Floor, Manor Complex Pittsburgh, PA 15219 (412) 565-7680

Proceedings include all events. MAG APPEAL
2:01cv1956 BANKS v. BEARD CLOSED

/18/01	1	COMPLAINT Filing Fee $ 150.00 Receipt # 349 (jsp) [Entry date 10/18/01]
/18/01	--	CASE REFERRED to Mag. Judge Kenneth J. Benson (jsp) [Entry date 10/18/01]
10/02	27	MEMORANDUM ORDER denying [20-1] motion for Summary Judgment, granting [16-1] motion for Summary Judgment, adopting [25-1] report and recommendations; FURTHER ORDERED that final judgment of this Court is entered pursuant to Rule 58 of the FRCP. (signed by Judge Terrence F. McVerry on 1/10/03) CM all parties of record. NOTICE MAILED (plh) [Entry date 01/13/03]
11/02	2	ANSWER to Complaint by JEFFREY BEARD (Attorney Kemal Alexander Mericli) (jsp) [Entry date 01/11/02]
14/02	3	MOTION by RONALD BANKS for Class Certification with Proposed Order. (plh) [Entry date 01/14/02]
28/02	4	ORDER, set Plaintiffs Pretrial Statements deadline for 2/20/02, set Defendants Pretrial Statements deadline for 3/20/02 (signed by Mag. Judge Kenneth J. Benson on 1/28/02) CM all parties of record. (cw) [Entry date 01/29/02]
/5/02	5	ORDER vacating [4-1] order set Plaintiffs Pretrial Statements deadline for 2/20/02, vacating [4-2] relief set Defendants Pretrial Statements deadline for 3/20/02, vacating [4-3] relief, set Case Management Conference for 10:00 2/14/02 by Telephone. (signed by Mag. Judge Kenneth J. Benson on 2/5/02) CM all parties of record. (plh) [Entry date 02/05/02]
19/02	6	ORDER, reset Case Management Conference by Telephone for 10:30 2/20/02. (signed by Mag. Judge Kenneth J. Benson on 2/19/02) CM parties of record. (plh) [Entry date 02/19/02]
2/02	7	TELEPHONE Case Management Conference held on 2/20/02 before Mag. Judge Kenneth J. Benson [Reporter: none] (plh) [Entry date 02/22/02]
2/02	8	CASE MANAGEMENT ORDER setting Discovery cutoff on 6/20/02 ; Status Conference set for 10:15 6/19/02. (signed by Mag. Judge Kenneth J. Benson on 2/22/02) CM all parties of record. (plh) [Entry date 02/22/02]
/22/02	9	REPORT AND RECOMMENDATION of Mag. Judge Kenneth J. Benson signed on 2/22/02 Recommending that [3-1] motion for Class Certification be granted, and that a class of pltfs be certified in this case as more fully described below; The parties have 10 days from the date of service to file objections to this Report and Recommendation. (plh) [Entry date 02/22/02]

cket as of March 18, 2003 11:40 am Page 3

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roceedings include all events. MAG APPEAL
01cv1956 BANKS v. BEARD CLOSED

/22/02 10 MEMORANDUM and ORDER granting [3-1] motion for Class Certification, as current and future Phase 2 Long Term Segregation inmates who are confined or will be confined in Pennsylvania Department of Corrections prisons located within the venue of the Western Federal Judicial District of Pennsylvania; adopting [9-1] report and recommendations. (signed by Judge Robert J. Cindrich on 3/22/02) CM all parties of record. (plh) [Entry date 03/25/02]

/19/02 11 Status Conference held before Mag. Judge Kenneth J. Benson [Reporter: none] (plh) [Entry date 06/19/02]

/19/02 12 ORDER, set Discovery deadline to 8/3/02, set Telephone Status Conference for 9:30 8/5/02. (signed by Mag. Judge Kenneth J. Benson on 6/19/02) CM all parties of record. (plh) [Entry date 06/19/02]

/7/02 13 ORDER, set Motion Filing deadline to 9/19/02, Reply to Response to Motion on or before 10/21/02. (signed by Mag. Judge Kenneth J. Benson on 8/7/02) CM all parties of record. (plh) [Entry date 08/08/02]

7/02 14 Tele-conference held on 8/5/02 before Mag. Judge Kenneth J. Benson [Reporter: none] (plh) [Entry date 08/08/02]

12/02 15 ORDER REFERRING CASE to Mag. Judge Robert C. Mitchell (signed by Judge D. B. Smith on 9/12/02) CM all parties of record. (jsp) [Entry date 09/13/02]

20/02 16 MOTION by JEFFREY BEARD for Summary Judgment with Proposed Order. (plh) [Entry date 09/20/02]

20/02 17 STATEMENT OF MATERIAL FACTS by JEFFREY BEARD (plh) [Entry date 09/20/02]

20/02 18 BRIEF by JEFFREY BEARD in support of [16-1] motion for Summary Judgment by JEFFREY BEARD (plh) [Entry date 09/20/02]

20/02 19 APPENDIX to [16-1] motion for Summary Judgment by JEFFREY BEARD (plh) [Entry date 09/20/02]

27/02 20 MOTION by RONALD BANKS for Summary Judgment with Proposed Order. (plh) [Entry date 09/27/02]

/27/02 21 BRIEF by RONALD BANKS in support of [20-1] motion for Summary Judgment by RONALD BANKS (plh) [Entry date 09/27/02]

/27/02 22 APPENDIX to [21-1] support brief by RONALD BANKS (plh) [Entry date 09/27/02]

roceedings include all events. MAG APPEAL
01cv1956 BANKS v. BEARD CLOSED

0/3/02	23	RESPONSE by RONALD BANKS to [16-1] motion for Summary Judgment by JEFFREY BEARD (plh) [Entry date 10/03/02]
/4/02	24	ORDER that the Clerk of Court reassign this case to the Hon. Judge Terrence F. McVerry. (signed by Judge Robert J. Cindrich on 10/4/02) CM all parties of record. (plh) [Entry date 10/04/02]
0/4/02	--	CASE reassigned to Judge Terrence F. McVerry (plh) [Entry date 10/04/02]
1/15/02	25	REPORT AND RECOMMENDATION of Mag. Judge Robert C. Mitchell signed on 11/15/02 Recommending that [20-1] motion for Summary Judgment be denied, [16-1] motion for Summary Judgment be granted ; The parties have 10 days from the date of service to file objections to this Report and Recommendation. (plh) [Entry date 11/15/02]
1/26/02	26	OBJECTION by RONALD BANKS to [25-1] report and recommendations (plh) [Entry date 11/26/02]
/10/03	--	Case closed (plh) [Entry date 01/13/03]
1/10/03	27	ORDER granting [16-1] motion for Summary Judgment denying [20-1] motion for Summary Judgment and Final Judgment is Entered by the Court. (signed by Judge Terrence F. McVerry on 1/10/03) CM all parties of record. (aen) [Entry date 01/23/03]
/23/03	28	NOTICE OF APPEAL by RONALD BANKS from order dated 1/10/03 FILING FEE $ 105. RECEIPT # 2011 TPO issued. (pt) [Entry date 01/23/03]
/23/03	--	Certified copy of Notice of Appeal [28-1] appeal by RONALD BANKS , certified copy of docket, certified copy of order dated 1/10/03 mailed to USCA; copy of Notice of Appeal and information sheet to counsel of record, M.J. Mitchell and Judge McVerry. Copy of information sheet to appellant. (pt) [Entry date 01/23/03]
/27/03	29	Transcript Purchase order re: [28-1] appeal by RONALD BANKS advising that an transcript is not needed for appeal purposes. (plh) [Entry date 01/27/03]
/27/03	--	Record complete for Appeal purposes, certified copy of docket entries forwarded to USCA. (plh) [Entry date 01/27/03]
/31/03	--	RECEIPT from USCA of receiving docket entries on 1/29/03. (plh) [Entry date 01/31/03]
/31/03	--	USCA Case Number Re: [28-1] appeal by RONALD BANKS USCA NUMBER: 03-1245 (plh) [Entry date 01/31/03]

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RECEIVED
NOV 18 2002
BY:

RONALD BANKS,
Plaintiff,

vs

JEFFREY BEARD,
Defendant

Civil Action No 01-1956

REPORT AND RECOMMENDATION

I. Recommendation

It is respectfully recommended that the motion for summary judgment submitted on behalf of defendant (Docket No. 16) be granted, and plaintiffs' motion for summary judgment (Docket No 20) be denied.

II. Report

Presently before this Court for disposition are cross motions for summary judgment.

Plaintiff Ronald Banks commenced this action under 42 U.S.C. § 1983, on behalf of himself and other similarly situated prisoners alleging that defendant's policy denying certain segregated inmates access to newspapers, magazines and photographs is violative of their First Amendment rights.

The record demonstrates that the Department of Corrections has established a Long Term Segregation Unit ("LTSU") at the State Correctional Institution at Pittsburgh ("SCIP") to house inmates that are "the most incorrigible, the most difficult, problematic, and

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have demonstrated the most behavior conflicts "[1] The purpose of creating the LTSU is to ensure the safety and security of the Department and to promote behavioral changes in the inmates assigned there.[2] The LTSU population presently consists of approximately forty inmates and constitutes approximately one tenth of one percent of the entire prison population in the state system.[3] The LTSU is the most restrictive in the State and policy permits only one inmate out of his cell at a time who must then wear hand and leg restraints and must be escorted by two correctional officers.[4] Each inmate coming into the LTSU spends a minimum of ninety days on "Level 2" where they are prohibited from having newspapers, magazines or photographs in their cells.[5] Nor do Level 2 inmates have access to the prison library where newspapers and magazines subscribed to by the prison are held. Moreover, they may only receive news clippings in the mail if they have some connection to the inmate.[6] As such, any magazines, newspapers or photographs in the inmates possession when he is transferred to the LTSU are placed in storage and any such materials subsequently found in an inmates's possession are considered contraband

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1 Deposition of Deputy Superintendent Joel Dickson ("Dickson Depo."), pp. 25-26, 28, 92. A copy of Mr. Dickson's deposition transcript has been submitted by defendant as Appendix A (Docket No. 19).

2 Id. at 24-25.

3 Id. at 17, 25.

4 Id. at 89.

5 Id. at 18-19, 46-48, 68-70

6 Id. at 46-48.

and confiscated.[7] Indeed, the only reading material that Level 2 inmates are permitted to have are paperback books that they can order from the library.[8]

After the initial ninety-day period, correction officials review each inmate's progress every thirty days to determine whether their behavior warrants a promotion to Level 1 where the inmates are permitted to have an ordinary general circulation newspaper in their cell and up to five magazines that may be exchanged on a one-for-one basis.[9] Presently, approximately three of the thirty-nine inmates held in the LTSU are on Level 1.[10]

Deputy Superintendent Joel Dickson, who supervises the LTSU at SCIP, testified at his deposition that these prohibitions serve several penological purposes. First, it promotes behavior modification. Defendant's position is that by ameliorating the prohibitions for Level 1 inmates and virtually eliminating them for the general prison population, it encourages the most difficult prisoners to not only become integrated into the general population but, upon release, to be a more productive citizens. Second, according to Deputy Dickson, the policy promotes security as the less property these inmates have in their cells the more difficult it is for them to conceal contraband. As well, it minimizes the materials available to these inmates that can be used to create harm either to themselves or to others.[11] In this regard, Dickson testified that

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[7] Id. at 48, 50-51, 71.

[8] Id. at 91.

[9] Id. at 20, 55-56, 88

[10] Id. at 17

[11] Id. at 85-88.

newspapers and magazines can be rolled up and used as blow guns and spears, used to fling feces and urine at the guards, or used as tinder for cell fires.[12]

Plaintiff Banks filed the instant complaint on October 18, 2001, on behalf of himself and other similarly situated prisoners alleging that defendant's policy prohibiting Level 2 inmates from maintaining magazines, newspapers and photographs in their cells violates the free speech component of the First Amendment to the United States Constitution. Plaintiff seeks equitable and declaratory relief as well as the issuance of preliminary and permanent injunctions. A Motion for Class Certification was also filed by plaintiff on January 14, 2002, and, unopposed by defendant, was granted on March 22, 2002.[13]

The parties have now filed cross motions for summary judgment. Summary judgment is appropriate where "there is no genuine issue as to any material fact" and "the moving party is entitled to a judgment as a matter of law." Fed. R.Civ. P. 56(c). See Marzano v. Computer Science Corp., 91 F.3d 497, 501 (3d Cir. 1996). In deciding a motion for summary judgment the court must view all inferences in a light most favorable to the non-moving party. Id., citing Armbruster v. Unisys Corp., 32 F.3d 768, 777 (3d Cir. 1994). The non-moving party, however, may not rely on bare assertions, conclusory allegations or mere suspicions to support its claim but must demonstrate by record evidence the meritorious nature of the claim. Orsatti v. New Jersey, 71 F.3d 480, 484 (3d Cir. 1995).

The law is not in dispute. In an effort to balance an inmate's right to maintain his or her Constitutional protections within the prison setting and the necessity of limiting those

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[12] Id. at 85-88, 91-92.

[13] See Docket Nos. 9 and10.

rights by prison officials in order to accommodate the demands of managing a prison, the United States Supreme Court has held that a prison policy that intrudes on an inmate's constitutional rights will nevertheless be upheld "if it is reasonably related to legitimate penological interests." Turner v. Safley, 482 U.S. 78, 89 (1987)("Turner"). See Fraise v. Terhune, 283 F.3d 506, 515 (3d Cir. 2002)("Fraise"). As reiterated by the Court of Appeals for the Third Circuit, Turner requires a court to weigh four factors in determining whether this standard has been met:

> [F]irst, whether the regulation bears a "valid, rational connection" to a legitimate and neutral governmental objective; second, whether prisoners have alternate ways of exercising the circumscribed right; third, whether accommodating the right would have a deleterious impact on other inmates, guards, and the allocation of prison resources generally; and fourth, whether alternatives exist that "fully accommodate[] the prisoner's rights at a de minimus cost to valid penological interests."

Fraise v. Terhune, 283 F.3d at 513-14, quoting Turner v. Safley, 482 U.S. at 91. Although these factors are merely guidelines by which to evaluate the reasonableness of prison regulations "'the first fact looms especially large,' because it 'tends to encompass the remaining factors, and some of the criteria are apparently necessary conditions.'" Waterman v. Farmer, 183 F.3d 208, 213-14 (3d Cir. 1999), quoting Amatel v. Reno, 156 F.3d 192, 196 (D.C. Cir. 1998), cert. denied, 527 U.S. 1035 (1999). Moreover, where the regulation at issue implicates prison security, particular deference should be accorded to prison authorities. Fraise v. Terhune, 283 F.3d at 516, relying on Turner v. Safley, 482 U.S. at 84-85.

Here, as previously discussed, defendant contends that the policies at issue serve the penological interests of furthering prison security and encouraging compliant behavior in

particularly disobedient and rebellious inmates.[14] Plaintiffs do not appear to challenge the legitimacy of these governmental objectives but rather contend that there is no rational connection between these objectives and the policy of prohibiting Level 2 inmates to have newspapers, magazines and photographs in their cells.[15]

Specifically, with respect to the prison's interest in encouraging compliant behavior, plaintiffs argue that rehabilitative goals are only furthered by maintaining contact with the outside world and that isolating these inmates from such contact is therefore counter productive. As well, plaintiffs contend that because the LTSU invokes other compelling rehabilitation incentives that the additional inducements of prohibiting newspapers, magazines and photographs are only marginally worthwhile.

The difficulty with plaintiffs arguments, in our view, is that having newspapers and magazines available to them while in the general population or the Special Management Unit apparently did nothing to further their rehabilitation or they wouldn't now be in the LTSU. Indeed, plaintiffs are in the LTSU because efforts in other units failed thus already proving

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[14] We note here that defendant does not dispute that the policies at issue infringe on plaintiffs' First Amendment rights in the first instance but argue that they should nevertheless be upheld because they are reasonably related to legitimate penological interests.

[15] Although defendant has challenged whether plaintiffs have exhausted administrative review of the policy against photographs, plaintiffs have submitted documentation which suggests that they have. See Plaintiffs' Reply to Defendant's Motion for Summary Judgment (Docket No. 23). As such the issue is properly considered by the Court. See Ahmed v. Dragovich, 297 F.3d 201, 209 n.9 (3d Cir. 2002); Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532, 534-37 (7th Cir. 1999).

themselves to be the most incorrigible, the most difficult, and the most problematic prisoners.[16] Having consequently been transferred to the LTSU, it seems not only rational to impose more restrictive conditions in an effort to encourage compliant behavior but imperative to the success of the LTSU

Plaintiffs also argue that defendant's security objectives are not rationally related to the prohibition of newspapers, magazines and photographs since there are other means available to these prisoners to start fires, hurl waste, conceal contraband and create weapons. The fact that the policy does not completely eliminate the opportunity for these inmates to create security concerns, however, does not, in our view, render the policy unrelated to those concerns or negate the prison's interest in minimizing the prisoners' access to materials that are most easily and commonly used as weapons or to set fires and fling feces. Indeed, it appears less likely that an inmate would use their bedding, clothes, legal and religious papers to start fires or fling feces than the daily newspaper.

Moreover, of primary concern is the use of the prohibited items as blow guns and spears for which magazines and newspapers, given their ability to be rolled, are ideal.[17] Plaintiffs nevertheless argue that the relationship between the policy and this objective is too tenuous to pass constitutional muster as evidenced by the fact that other dangerous and problematic inmates housed in other segregated units do not have the same restrictions imposed upon them. While it may be true that prisoners in the Special Management Unit and Administrative Custody enjoy some access to newspapers and magazines, Deputy Superintendent Dickson testified that should

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[16] See Dickson Depo. at 25.

[17] Dickson Depo. at 91, 93.

they show a propensity to use them as weapons or to set fires and fling feces that they too "would be on their way to the LTSU "[18] Thus, it appears that the inmates in the other segregated units do not present the same security concerns as those in the LTSU and the fact that they have access to the materials utilized by LTSU inmates as weapons does not serve to sever the connection between the prohibition at issue and prison security

Because the record appears to support a finding that the policy denying Level 2 inmates access to newspapers, magazines and photographs bears a valid and rational connection to legitimate prison objectives, the first Turner factor appears to weigh in defendant's favor.

Similarly, it appears clear that the second factor – whether these inmates have an alternative way of exercising their constitutionally protected rights – also weighs in defendant's favor. Significantly, the prison's policy denying plaintiffs access to the cited articles is not a blanket prohibition. To the contrary, each of these prisoners has the option of modifying their behavior and being promoted to a less restricted environment where access to newspapers, magazines and photographs may be enjoyed. Moreover, it appears that Level 2 inmates are able, albeit on a limited basis, to visit with loved ones and are able to carry on a correspondence.[19]

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[18] Dickson Depo. at 92.

[19] As well, although plaintiffs have stated that there is no opportunity to see their minor children and other relatives because the Department of Corrections prohibits minors from visiting Level 2 inmates, see Plaintiffs' Brief in Support of Their Motion for Summary Judgment, p. 16 (Docket No. 21), the LTSU Rules and Regulations, which have been provided by plaintiffs, states that the number of visitors during any given time is two which may include one child under the age of 18 and that "[t]he Shift Commander has the discretion to permit additional visitors such as small children and/or infants on a case-by-case basis." See Appendix to

(continued...)

The third factor appears to weigh in favor of the prison's policy as well. This prong of the Turner test obligates the court to consider the effect that accommodating the right would have on fellow inmates, prison staff and on the allocation of prison resources. Fraise v. Terhune, 283 F.3d at 520; DeHart v. Horn, 227 F.3d 47, 57 (3d Cir. 2000).

In Fraise v. Terhune, supra, a group of inmates brought suit alleging that the prison policy which authorizes prison officials to designate and transfer core members of "security threat groups" was violative of the Free Exercise Clause of the First Amendment as well as the Equal Protection and Due Process Clauses. As in the present case, the prison's stated penological objective for justifying the policy was prison security. In addressing the third Turner factor, the Court of Appeals for the Third Circuit quoted the Fourth Circuit's opinion in In re Long Term Admin. Segregation of Inmates Designated as Five Percenters, 174 F.3d 464, 470 (4th Cir.), cert. denied, 528 U.S. 874 (1999), which in turn relied upon Turner, stating that:

> Prison administration often involves tradeoffs. In the closed environment of a prison, greater liberties for some may mean increased danger and intimidation for others. Because increased freedom for the Five Percenters would come "only at the cost of significant less liberty and safety for everyone else, guard and other prisoners alike," we are particularly reluctant to interfere with the judgment of the [prison officials] in this case.

Fraise v. Terhune, 283 F.3d at 520. Noting that under Turner a highly deferential standard should be applied when there is a "ripple effect" on others, the Fraise Court found that the fourth prong had been satisfied. Id.

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[9] (...continued)
Plaintiffs' Brief in Support of Their Motion For Summary Judgment, p. 23 (Docket No. 22).

Here, having already found ample evidence to support a finding that access to newspapers, magazines and photographs presents a threat to the security of both guards and other prisoners in the LTSU, it appears that accommodating plaintiffs' asserted right would have the very "ripple effect" referred to in Turner and Fraise. Accordingly, the prison officials are entitled to a high degree of deference and, under Fraise, the third factor also appears to weigh in defendant's favor.

Nor does plaintiffs' renewed argument that because inmates in other segregated units have access to newspapers and magazines without negative impact compel a different result. Indeed, it is not the mere presence of the magazines and newspapers that create the security concerns but what these particular inmates have chosen to do with them. The fact that other segregated inmates have not created the same security concerns while in possession of newspapers and magazines is one reason why they are in those units and not in the LTSU. Indeed, it appears that the same fate awaits any of the inmates confined in any of the other segregation units that cannot maintain an acceptable level of behavior. Conversely, plaintiffs are being deprived of newspapers and magazines because they have already proven themselves to be unwilling to behave in a responsible manner which precipitated their transfer to the LTSU in the first instance.

In addition, as argued by defendant, absent allowing plaintiffs access to the prohibited materials, which has proven unsuccessful, the only alternative appears to be individually escorting Level 2 prisoners to the mini library which is the only available site in the LTSU for reading newspapers. Such an accommodation, however, would not only intensify security concerns by increasing the amount of inmate movement but it would seemingly place a

formidable burden on the LTSU staff. See Allah v. Al-Hafeez, 208 F.Supp.2d 520, 530 (E.D. Pa. 2002)(Finding that the third Turner factor weighed in defendants' favor where plaintiff's behavior created a security concern and that accommodating his attendance at religious services would require more monitoring thereby straining prison resources and affecting the prison staff and other inmates.)

Finally, the court must evaluate whether there are alternatives to the policy that would impose only a de minimis cost to valid penological interests. Fraise v. Terhune, 283 F.3d at 513-514.

Plaintiffs suggest that an alternative would be to establish a reading period during which guards would deliver newspapers and magazines to each inmate in their respective cells and retrieve them at the end of the period. Plaintiffs argue that the number of publications that each inmate could have in his cell at one time could be limited as well as the number of days each week that the reading materials would be distributed.

We fail to see, however, how having a designated reading period would prevent the Level 2 inmates from using the reading material provided to them to start fires, fling feces or create weapons, as they have shown a willingness to do. Indeed, it appears that in order to give effect to plaintiffs' proposed alternative a guard would be required to monitor each cell during the reading period thus impacting not only the guards and other inmates but prison resources as well. Moreover, implementing plaintiffs' suggestion would not be without sacrifice to the prison's behavioral modification goals. It therefore appears that the cost of plaintiffs' proposed alternative is not de minimis and the fourth consideration set forth in Turner also appears to weigh in defendant's favor. See Fraise v. Terhune, 283 F.3d at 521, quoting Turner, 482 U.S. at

91 ("We reiterate that our inquiry is not whether the state could have adopted a less restrictive alternative but rather it could have adopted an alternative that imposed only 'de minimis cost to legitimate penological interests '")

Because all of the factors set forth in Turner appear to weigh in defendant's favor, the LTSU's policy prohibiting access to newspapers, magazines and photographs appears to be reasonably related to legitimate penological interests and, thus, is properly upheld notwithstanding its intrusion on plaintiffs' Constitutional rights.

For these reasons, it is recommended that the motion for summary judgment submitted on behalf of defendant (Docket No 16) be granted, and plaintiffs' motion for summary judgment (Docket No. 20) be denied.

Within ten (10) days of being served with a copy, any party may serve and file written objections to this Report and Recommendation. Any party opposing the objections shall have seven (7) days from the date of service of objections to respond thereto. Failure to file timely objections may constitute a waiver of any appellate rights.

Respectfully submitted,

Robert C. Mitchell

ROBERT C. MITCHELL,
United States Magistrate Judge

Dated: November 19, 2002

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RONALD BANKS, for himself and on behalf of all similarly situated prisoners who are confined or will be confined in Long Term Segregation Units of State prisons located in the Western Judicial District of Pennsylvania,	)	
Plaintiffs	)	
v.	)	Civil Action No. 01-1956
JEFFREY BEARD, in his official capacity as Secretary of the Pennsylvania Department of Corrections,	)	
Defendant.	)	

MEMORANDUM ORDER

AND NOW, this 10th day of January, 2003, after the plaintiff, Ronald Banks, filed an action in the above-captioned case, and after cross motions for summary judgment were submitted by the parties, and after a Report and Recommendation was filed by United States Magistrate Judge Robert C. Mitchell (*Document No. 25*) granting the parties ten days after being served with a copy to file written objections thereto, and upon consideration of the objections filed by plaintiff (*Document No. 26*), which the Court notes were virtually identical to the arguments made by plaintiff in his brief in support of summary judgment and said arguments were previously given due consideration by the Magistrate Judge, and upon independent review of the motions and the record, and upon consideration of the Magistrate Judge's Report and Recommendation, which is adopted as the opinion of this Court,

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It is **ORDERED, ADJUDGED, AND DECREED** that defendant's motion for summary judgment (*Document No. 16*) is **GRANTED** and plaintiff's motion for summary judgment (*Document No 20*) is **DENIED.**

It is further **ORDERED** that final judgment of this Court is entered pursuant to Rule 58 of the Federal Rules of Civil Procedure.

Terrence F. McVerry, Judge
United States District Court

cc: Jere Krakoff, Esquire
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CLERK'S OFFICE
United States District Court
for Western Pennsylvania

Civil Action No. 2:01-cv-01956
BANKS v. BEARD

There was entered on the docket January 10, 2003, an order granting mary judgment to deft.

Robert Barth, CLERK

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U.S Ct. of App. D.C Cir. Rule 36, 28 U S.C.A.

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UNITED STATES CODE ANNOTATED
UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT
TITLE VII. GENERAL PROVISIONS
>>Rule 36. Decisions of the Court, Opinions and Abbreviated Dispositions

(a) Opinions of the Court.

(1) Policy. It is the policy of this court to publish opinions and explanatory memoranda that have general public interest.

(2) Published Opinions. An opinion, memorandum, or other statement explaining the basis for the court's action in issuing an order or judgment will be published if it meets one or more of the following criteria:

(A) with regard to a substantial issue it resolves, it is a case of first impression or the first case to present the issue in this court;

(B) it alters, modifies, or significantly clarifies a rule of law previously announced by the court;

(C) it calls attention to an existing rule of law that appears to have been generally overlooked;

(D) it criticizes or questions existing law,

(E) it resolves an apparent conflict in decisions within the circuit or creates a conflict with another circuit;

(F) it reverses a published agency or district court decision, or affirms a decision of the district court upon grounds different from those set forth in the district court's published opinion,

(G) it warrants publication in light of other factors that give it general public interest

All published opinions of the court, prior to issuance, will be circulated to all judges on the court; printed prior to release, unless otherwise ordered; and rendered by being filed with the clerk.

(b) Abbreviated Dispositions. The court may, while according full consideration to the issues, dispense with published opinions where the issues occasion no need therefor, and confine its action to such abbreviated

disposition as it may deem appropriate, e g., affirmance by order of a decision or judgment of a court or administrative agency, a judgment of affirmance or reversal, containing a notation of precedents or accompanied by a brief memorandum. If the parties have agreed to such disposition, they may so state in their briefs or may so stipulate at any time prior to decision. In any such case the court will promptly issue a judgment unless compelling reasons dictate otherwise

(c) Unpublished Opinions.

(1) An opinion, memorandum, or other statement explaining the basis for this court's action in issuing an order or judgment under subsection (b) above, which does not satisfy any of the criteria for publication set out in subsection (a) above, will nonetheless be circulated to all judges on the court prior to issuance. A copy of each such unpublished opinion, memorandum, or statement will be retained as part of the case file in the clerk's office and be publicly available there on the same basis as any published opinion.

(2) While unpublished orders and judgments may be cited to the court in accordance with Circuit Rule 28(c)(1)(B), a panel's decision to issue an unpublished disposition means that the panel sees no precedential value in that disposition

(d) Motion to Publish. Any person may, by motion made within 30 days after judgment or, if a timely petition for rehearing is made, within 30 days after action thereon, request that an unpublished opinion be published. Motions filed out of time will not be considered unless good cause is shown Motions for publication must be based upon one or more of the criteria listed in subsection (a). Such motions are not favored and will be granted only for compelling reasons

<Federal Rules of Appellate Procedure also govern procedure in appeals to United States courts of appeals>

Amendments received to 07-31-05

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